

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: AMERICAN MEDICAL
COLLECTION AGENCY, INC.,
CUSTOMER DATA SECURITY
BREACH LITIGATION

Case No.: 2:19-MD-02904-MCA-MAH

MDL 2904

SPECIAL DISCOVERY MASTER ORDER

*This Document Relates To:
Quest/Optum360 Track*

WHEREAS, this matter between Plaintiffs and Defendants Quest Diagnostic Incorporated (“Quest”) and Optum360, LLC (“Optum”) (collectively, “Defendants” and together with Plaintiffs, the “Parties”) having come before the undersigned Special Discovery Master, appointed by Order entered on July 19, 2023, to address a series of written discovery disputes (ECF No. 550); and the Special Discovery Master having considered the fully briefed discovery disputes set forth in the Parties’ Joint Letter dated February 22, 2023 (ECF No. 474); and the Special Discovery Master having considered the arguments of counsel during the November 1, 2023, discovery dispute hearing, which was transcribed by a Certified Court Reporter, the transcript of which is attached hereto;¹ and the Special Discovery Master having considered the competing proposed orders submitted by the Parties on December 4, 2023; and for the reasons stated on the record; and for other good cause shown;

¹ References to the transcript are to the November 1, 2023 Special Discovery Master Hearing and will be described as “Tr.”

IT IS on this 18th day of December 2023,

A. Method & Manner of Transmission of Quest Patient Data to AMCA (RFPs 36-40).

ORDERED that Defendants shall produce documents responsive to Plaintiffs' Request for Production of Documents Nos. 36-40 related to the transmission of Quest Patient Data to AMCA. [See Tr. 18:15-25:2]

B. Defendants' Internal Policies & Procedures Related to Data Security & the Protection of PHI and/or PII (RFPs 44, 45; ROGs 5, 8).

ORDERED that the Parties shall continue to meet and confer and, to the extent Defendants have not already done so, Defendants shall (i) produce documents responsive to Plaintiffs' Request for Production of Documents Nos. 44 and 45, and (ii) provide information responsive to Plaintiffs' First Set of Interrogatories Nos. 5 and 8. [For RFPs 44-45, see Tr. 27:4-28:6, 31:18-32:24, 35:2-13; For ROGs 5, 8, see Tr. 37:12-38:16]

C. Sale of Quest Patient Data on the Dark Web (RFPs 47, 48).

ORDERED that Defendants shall identify the custodial and non-custodial data sources likely to contain Documents and Communications responsive to Plaintiffs' Request for Production of Documents Nos. 47 and 48. Defendants shall also provide a sample of 25 documents to Plaintiffs and the Special Discovery Master for in camera review. The Parties shall continue to meet and confer on this discovery dispute. [See Tr. 53:9-17, 61:4-62:7]

D. Compensation Paid to AMCA & Other Medical Billing Agencies (RFPs 24, 25); Revenue Received from AMCA's Services & Related Expenses (RFPs 26-29).

ORDERED that the Parties shall continue to meet and confer and, to the extent Defendants have not already done so, Defendants shall produce documents responsive to Plaintiffs' Request for Production of Documents Nos. 24-29 related to financial information. [See Tr. 66:5-6, 68:8-69:20]

E. Data Security & Information Technology Expenses (RFPs 30, 31).

ORDERED that Defendants shall produce Documents responsive to Plaintiffs' Request for Production of Documents Nos. 30 and 31 after the Parties further meet and confer as to the proper scope of production. [See Tr. 71:4-74:5]

F. Volume or Percentage of Sales Sent to Collection Agencies (RFP 32).

ORDERED that the Parties shall meet and confer and, to the extent Defendants have not already done so, Defendants shall produce documents responsive to Plaintiffs' Request for Production of Documents No. 32, and amend their responses to identify same. [See Tr. 76:9-12]

G. Risk Assessments & Remediation of AMCA' Systems (ROGS 1, 3, 4); Format of Quest Patient Data (ROG 6); Defendants' Training of Employees (ROG 9)

ORDERED that Quest shall supplement its narrative response to Plaintiffs' First Set of Interrogatories Nos. 1, 3, 4, 6, and 9. [For ROGS 1, 3, 4, Tr. 83:18-23-85:7, 88:10-89:20; For Rog 6, Tr. 91:22-94:2; For ROG 9, Tr. 104:14-105:9]

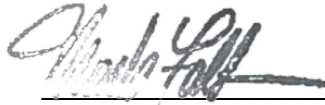
ORDERED that Optum360 shall supplement its narrative responses to Plaintiffs' First Set of Interrogatories No. 9. [Tr. 104:14-105:9]

H. Notification of the Data Breach (ROGs 11, 12)

ORDERED that Defendants shall provide a narrative response to Plaintiffs' First Set of Interrogatories Nos. 11 and 12; however, if Defendants still maintain their claim of privilege, then Defendants shall immediately forward to the Special Discovery Master a privilege log and the relevant documents/communications for in camera review. [See Tr. 99:2-101:5]

I. Quest's Assignment of Contract to Optum (ROG 7)

ORDERED that the Parties shall continue to meet and confer and, to the extent Optum has not already done so, Optum shall identify Documents and Communications responsive to Plaintiffs' First Set of Interrogatories No. 7. [See Tr. 101:5-22]

A handwritten signature in black ink, appearing to read "Mark Falk", is positioned above a horizontal line.

Mark Falk, Special Master

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CASE NO. 19-MD-02904

IN RE: AMERICAN MEDICAL
COLLECTION AGENCY, INC.,
CUSTOMER DATA SECURITY BREACH
LITIGATION

WEDNESDAY, NOVEMBER 1, 2023
SPECIAL DISCOVERY MASTER HEARING

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 BEFORE: THE HONORABLE MARK FALK (ret.)</p> <p>4</p> <p>5</p> <p>6 ALSTON & BIRD LLP</p> <p>7 BY: DONALD HOUSER, ESQ.</p> <p>8 ERIN EDWARDS, ESQ.</p> <p>9 1 Atlantic Center</p> <p>10 1201 West Peachtree Street</p> <p>11 Atlanta, Georgia 30309</p> <p>12</p> <p>13</p> <p>14 SIDLEY AUSTIN LLP</p> <p>15 BY: HEATHER SULTANIAN, ESQ.</p> <p>16 1 South Dearborn</p> <p>17 Chicago, Illinois 60603</p> <p>18 (312) 853-7000</p> <p>19</p> <p>20</p> <p>21 SIDLEY AUSTIN LLP</p> <p>22 BY: LAURA SORICE, ESQ.</p> <p>23 787 7th Avenue</p> <p>24 New York, New York 10019</p> <p>25 (212) 839-5599</p>	<p style="text-align: right;">Page 4</p> <p>1 Washington, D.C. 20004</p> <p>2 (202) 637-5600</p> <p>3</p> <p>4</p> <p>5 LIEFF CABRASER HEIMANN & BERNSTEIN</p> <p>6 BY: JASON LICHTMAN, ESQ.</p> <p>7 250 Hudson Street</p> <p>8 New York, New York 10013</p> <p>9 (212) 355-9500</p> <p>10</p> <p>11</p> <p>12 STUEVE SIEGEL HANSON</p> <p>13 BY: NORMAN SIEGEL, ESQ.</p> <p>14 460 Nichols Road, Suite 200</p> <p>15 Kansas City, Missouri 64112</p> <p>16 (816) 714-7112</p> <p>17</p> <p>18</p> <p>19 SEEGER WEISS LLP</p> <p>20 BY: CHRISTOPHER AYERS, ESQ.</p> <p>21 55 Challenger Road</p> <p>22 Ridgefield Park, New Jersey 07660</p> <p>23 (973) 639-9100</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 CARLTON FIELDS</p> <p>2 BY: MICHAEL HENSLEY, ESQ.</p> <p>3 180 Park Avenue, Suite 106</p> <p>4 Florham Park, New Jersey 07932</p> <p>5 (973) 828-2600</p> <p>6</p> <p>7</p> <p>8 O'TOOLE SCRIVO, LLC</p> <p>9 BY: THOMAS SCRIVO, ESQ.</p> <p>10 YOUNG YU, ESQ.</p> <p>11 14 Village Park Road</p> <p>12 Cedar Grove, New Jersey 07009</p> <p>13 (973) 239-5700</p> <p>14</p> <p>15</p> <p>16 LEWIS BRISBOIS BIDGAARD & SMITH LLP</p> <p>17 BY: ARIADNE PANAGOPOULOU, ESQ.</p> <p>18 77 Water Street, Suite 2100</p> <p>19 New York, New York 10005</p> <p>20 (212) 232-1300</p> <p>21</p> <p>22</p> <p>23 HOGAN LOVELLS</p> <p>24 BY: ALICIA PALLER, ESQ.</p> <p>25 555 13th Street NW</p>	<p style="text-align: right;">Page 5</p> <p>1 CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, PC</p> <p>2 BY: JAMES CECCHI, ESQ.</p> <p>3 5 Becker Farm Road</p> <p>4 Roseland, New Jersey 07068</p> <p>5 (973) 994-1700</p> <p>6</p> <p>7</p> <p>8 WALSH PIZZI O'REILLY FALANGA LLP</p> <p>9 BY: PATRICK SALAMEA, ESQ.</p> <p>10 ERIC PADILLA, ESQ.</p> <p>11 3 Gateway Center</p> <p>12 100 Mulberry Street, 15th Floor</p> <p>13 Newark, New Jersey 07102</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 SPECIAL DISCOVERY MASTER FALK: Good 2 morning. I haven't met many of you. I'm Mark Falk, 3 and I was appointed as Special Discovery Master in 4 this case by Judge Arleo and Judge Hammer, and I look 5 forward to working with you all. We're starting a 6 little slowly today. We're only dealing with one 7 issue. Plaintiffs are asking not to handle those 8 issues because there have been further production. 9 I've read your stuff. It's very helpful. In the 10 future, if there is a future, if you have further 11 disputes, I'm going to ask that we do it in double 12 space. I'm in my 70s. My eyes are getting a little 13 weak. We managed to read everything. 14 So I would -- if you don't mind, I'd 15 like to go around the room so I know who everyone is. 16 MR. HOUSER: Donald Houser with Alston & 17 Bird and on behalf of Optum360. 18 MS. EDWARDS: Erin Edwards from Alston & 19 Bird also on behalf of Optum360. 20 MS. SULTANIAN: Good morning. Heather 21 Sultanian on behalf of Quest. 22 MS. SORICE: Laura Sorice on behalf of 23 Quest. 24 MR. HENSLEY: Mike Hensley on behalf of 25 Quest.</p>	<p style="text-align: right;">Page 8</p> <p>1 going to give it to you right now. 201-341-3629, and 2 you can call the numbers that they have here, but it 3 really -- we're using cell phones these days. 4 MR. CECCHI: Should I give them Lisa's 5 cell phone too? 6 SPECIAL DISCOVERY MASTER FALK: I have 7 it, but I don't think she needs that. 8 MR. CECCHI: I'm kidding. 9 SPECIAL DISCOVERY MASTER FALK: I'm new 10 to the case, obviously relatively new. I've done a 11 lot of reading. I may ask more questions than 12 someone who had been with the case from the start 13 would know. I intend to deal with the discovery 14 disputes, and I have very strong views on discovery. 15 So before we even start, I'm just going 16 to give you what you heard before and know before and 17 you quoted, et cetera, but I'd like to put it on the 18 record anyway, which is that we're dealing with the 19 scope of discovery, and it's all set forth in rule 26 20 and basically any matter that's relevant to the claim 21 or defense of any party in the pending action and is 22 proportional to the needs of the case is discoverable 23 because it's all privileged. Obviously, you all know 24 that. It was even cited in Mike Hammer's decision. 25 Relevant is not defined by the rules, but it's</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. SCRIVO: Thomas Scrivo for Optum360. 2 MR. YU: Good morning. Young Yu on 3 behalf of Optum360. 4 MS. PANAGOPOULOU: Ariadne Panagopoulou 5 from Lewis Brisbois. 6 MS. PALLER: Alicia Paller on behalf of 7 Laboratory Corporation of America Holdings. 8 MR. LICHTMAN: Jason Lichtman on behalf 9 of plaintiffs. 10 MR. SIEGEL: Normal Siegel from Kansas 11 City for plaintiffs. 12 MR. AYERS: Chris Ayers from Seeger 13 Weiss for plaintiffs. 14 MR. CECCHI: Jim Cecchi on behalf of 15 plaintiffs. Thank you, judge. 16 SPECIAL DISCOVERY MASTER FALK: Thank 17 you. Thank you very much. 18 So who will dive right in? I did say -- 19 so today, we're dealing with 474, but my intention -- 20 and the other one they asked to put off, which makes 21 sense, but I just want to assure everyone that we're 22 going to pick up the pace, and we'll resolve all your 23 discovery disputes, and if you have ongoing discovery 24 disputes, well, while I'm special master, don't 25 hesitate to call me, and the number to call, I'm</p>	<p style="text-align: right;">Page 9</p> <p>1 extremely broad, and courts have defined relevant to 2 encompass any matter that bears on or that reasonably 3 could lead to other matters that could bear on any 4 issue that is or may be in the case. It's also been 5 defined as germane. Of course, you know, and I'm 6 just putting this on the record that evidence -- that 7 discovery need not be admissible to be relevant. It 8 still can be discoverable. Of course, admissible 9 evidence is always discoverable. Proportionality, 10 it's funny thing about proportionality. That's 11 something that has always been in the rules, but 12 in -- it's not even recent anymore. It's sort of 13 underlined it. So discovery has to be proportional 14 to the needs of the case, meaning the expected 15 benefits of discovery must be in line with the cost 16 and burden of the discovery and the value of the 17 case. Rule 26(b)(1), which I have here, contains a 18 list of factors for evaluating proportionality. No 19 one factor is dispositive. So that is the importance 20 of the issues at stake in the action, the amount in 21 controversy. The parties relevant access to relevant 22 information, to parties resources, the importance of 23 the discovery in resolving the issues, and whether 24 the burden or expense of the proposed discovery 25 outweighs its likely benefit, and that's as much as I</p>

<p style="text-align: right;">Page 10</p> <p>1 put the rule down there I have. You're all familiar 2 with this, all excellent lawyers, and I just thought 3 I'd put it on the record. And now let's proceed. 4 So we're doing -- and I appreciate the 5 way you've presented this to me with binders and 6 everything. It's excellent. We'll deal with issue 7 474, and that is described as the method and manner 8 of transmission of Quest of patient data to AMCA, and 9 there are four requests for production. So the first 10 one is the method and manner of transmission of Quest 11 patient data to AMCA, and there are several requests 12 for admissions on that. Does anyone want to be heard 13 on that? Does anyone want to say anything? 14 MR. CECCHI: Sure, judge. Thank you. 15 SPECIAL DISCOVERY MASTER FALK: Sure. 16 MR. CECCHI: And thank you for setting 17 the parameters under the rules. And you also 18 mentioned Judge Hammer. 19 SPECIAL DISCOVERY MASTER FALK: Yes, I 20 did. 21 MR. CECCHI: I just briefly want to 22 touch upon Judge Hammer's earlier decision regarding 23 other data breach incidents. I would credit the 24 defendants for bringing that to the court's 25 attention. In my judgment, it's really a creative</p>	<p style="text-align: right;">Page 12</p> <p>1 case. So I just want to put that in perspective that 2 the touchstone today is the operative pleading. And 3 the final point I'll make about Hammer's decision 4 is -- my good friend, Donald Houser, quotes it, but 5 Hammer quoted the Labcorp complaint at that time, not 6 the Quest complaint. Today, these requests go to the 7 operative Quest complaint. Each of the requests that 8 we make are relevant to the pleading that we make in 9 that operative complaint, negligence per se, and the 10 California Medical Information Act claim, and that 11 will be, with your Honor's guidance, our framework 12 for showing the relevance of each of these requests. 13 SPECIAL DISCOVERY MASTER FALK: Good and 14 I'll take them one-by-one. Thank you. 15 MR. CECCHI: Thank you. 16 SPECIAL DISCOVERY MASTER FALK: Does 17 anyone want to respond to that? It's not necessary, 18 but if you want to. 19 MR. HOUSER: Sure. I think it's 20 important to level set where -- from the defendants 21 perspective, where we view the case and where we 22 stand right now. As your Honor knows, this involves 23 a AMCA data breach. The defendants have produced 24 30,000 documents and depositions of Optum and Quest 25 current and former witnesses. From our view, and I</p>
<p style="text-align: right;">Page 11</p> <p>1 and artful dodge because in order to understand where 2 we are today, it's important to put Hammer's ruling 3 in context. It was at the beginning of the case, 4 approximately four years ago. It was in the context 5 of a motion to stay discovery by the defendants in 6 the context of a proposal that I made to the 7 defendants to a limited batch of discovery, which we 8 could do while the motions to dismiss were pending. 9 We made a proposal to the defendants vis-a-vis that 10 limited batch of discovery, government investigation 11 records, and some other limited discovery. We also 12 asked for other data breach incidents. Judge Hammer 13 ruled on that request and found that it was beyond 14 the scope of the pleading. Now, it's important to 15 know that was two decisions ago. It was before Judge 16 Arleo motion to dismiss decision and her second 17 motion to dismiss decision. It was before the 18 amended complaint and the operative complaint, which 19 guides the framework under which I think the 20 relevancy determination should be made here today. 21 And I also want to mention to the court that it is 22 just a practical issue vis-a-vis that ruling, which 23 has no relevance to these requests that if they 24 believed it was preclusive of these requests, Judge 25 Hammer would let us know that if it was law of the</p>	<p style="text-align: right;">Page 13</p> <p>1 think one piece that's framing all of the 2 discussions, is the fact that we believe we've 3 produced everything that the plaintiffs need and are 4 relevant to their claims. They have a lot of the 5 information, and some of the documents that they 6 claim they don't have, they actually have that 7 information. We feel that we're kind of playing at 8 the extreme margins with respect to these discovery 9 requests. In our view, we're kind of off the page. 10 I'm happy to go through and talk about the 11 transmission issue in more detail, but we'll defer to 12 you. 13 MR. CECCHI: Judge, in terms of what has 14 been produced, we prepared a chart, and we'll it to 15 defendants and your Honor to reflect the number of 16 documents produced. In this case, the plaintiffs 17 produced far more documents than the defendants, 18 which is unusual. Quest has produced 700 documents 19 pre-breach. The normal and usual database case of 20 this magnitude, the second largest in the history of 21 the United States, Mr. Seeger, my co-counsel, has 22 done many of those cases. Tens of thousands of 23 documents are produced. Why? Because they're 24 relevant to the claims at issue here. Getting to the 25 nub of the case, the method and manner of</p>

<p style="text-align: right;">Page 14</p> <p>1 transmission of the data to AMCA goes directly to the 2 heartland of proving that case. To give you an 3 analogy, these are medical records, the most 4 sensitive medical records that these people possess. 5 You give blood to these people, and they have 6 information about your health. Very sensitive and 7 valuable information. If I had paper copies of this 8 and brought it to a warehouse, right, and put it on 9 the front door of the warehouse or in the warehouse, 10 but turned off the video cameras, all of that is 11 relevant to proving that Quest and Optum didn't 12 secure those paper records in an accurate and 13 confidentiality manner. I can quote to your Honor 14 that count one, two, and six directly speaks to how 15 the records were kept, how they're disseminated, and 16 how they're treated. They have to maintain 17 confidentiality. When I say it's nondelegable, just 18 because they gave it to AMCA, they can't wash their 19 hands of their obligation to make sure sensitive 20 pieces of information about your health are 21 protected. It was foreseeable because had they done 22 their due diligence about AMCA, they would know that 23 only were the systems inadequate, they were totally 24 inadequate. Their one tech guy said, "Yeah, I was 25 complaining about this for years. I knew that we had</p>	<p style="text-align: right;">Page 16</p> <p>1 negligence claim and the CMI claim. 2 MR. HOUSER: This is a third-party 3 breach, so it's not surprising that it's another 4 company's data security and that there are not a ton 5 of documents as there were as many as Mr. Cecchi 6 thinks there should be. I don't think the volume of 7 documents. I want to take a step back on what 8 Mr. Cecchi was hitting. He was hitting on the data. 9 We agree it's relevant to the case. He mentioned 10 that oversight of AMCA's security is relevant. We 11 agree that it's relevant, and we've agreed to produce 12 documents that bear on the AMCA's data security, the 13 oversight of AMCA's data security. That's not in 14 dispute with respect to the transmission issue. I 15 think a conflation of a lot of different pieces 16 moving on. 17 The second piece is we're talking about 18 the transmission and the method of transmission. If 19 that's what we're talking about, how is the data 20 transmitted? They know how the data was transmitted. 21 Its in the interrogatory responses. They've had 22 deposition testimony. It's not something that we're 23 trying to hide or a secret. It's not that 24 complicated. There were two methods by which it went 25 to AMCA. They know how it was transmitted to AMCA.</p>
<p style="text-align: right;">Page 15</p> <p>1 inadequate systems." The fact that it's AMCA is 2 another dodge. They had a duty to secure it, whether 3 it was a paper record in a warehouse or an electronic 4 file delivered to a debt collector. The method and 5 manner goes to ensure that medical information 6 regarding patient information is not disclosed or 7 disseminated and to protect and preserve medical 8 records in a manner that protects the confidentiality 9 of the information. That's count six. Count one and 10 count two, failing to exercise adequate security 11 systems, protocols, and practices sufficient to 12 protect plaintiffs and class members personal 13 information, failing to comply with industry 14 standards, i.e., not securing that information, 15 transmitting it in an insecure and unsafe manner from 16 Quest and Optum to AMCA. It's the heartland of our 17 negligence claim. You know, this case is not about a 18 snapshot in time. It's about the continuum of time 19 vis-a-vis their negligence from when they took my 20 medical information, ingested it, and then gave it 21 insecurely to AMCA and could foreseeably see that it 22 could be breached. By the way, not only included 23 medical records, it also included financial 24 information, which was in AMCA's files as well. We 25 think it's squarely in the heartland of the</p>	<p style="text-align: right;">Page 17</p> <p>1 This idea that too much information was sent, more 2 than minimally necessary. We have produced and Quest 3 has produced essentially the database file. They 4 know for every single plaintiff whose data was 5 transmitted, when it was transmitted, and elements 6 that were transmitted. So they have all that 7 information. I think if we then take a further step 8 back, what they're asking for here in these discovery 9 requests is every document that relates ever to PII 10 and then PHI, and it not at the tethered to data 11 security. The first request just says 36, RFP 36, 12 every document that relates to translation of 13 information. Full stop. It doesn't matter if it's 14 related to any other vendors. We want it all. They 15 seem to narrow in on their actual responses about the 16 security of transmission, but the data wasn't 17 captured or stolen during the transmission of the 18 file. The security transmission doesn't relate to 19 their claims. I think it's important to take a quick 20 step back and look at the allegations that they point 21 to. They point to the duties that Mr. Cecchi 22 referenced and other alleged duties relating to our 23 internal policies and procedures at Quest and Optum 24 and how we secure data. Our security policies and 25 procedures about how we secure data, that does not</p>

<p style="text-align: right;">Page 18</p> <p>1 bear on the plaintiffs claims. They don't arise from 2 the safeguarding of data on our systems or the 3 transmission. They're linked to the AMCA data 4 breach. They don't allege that they have suffered an 5 injury if a defendant has failed to secure data in a 6 completely separated location on the defendant's own 7 systems. It's the alleged insecurity with respect to 8 AMCA. So they know how it was transmitted. They had 9 deposition testimony on it. They have all the data 10 that was transmitted. The need for every single 11 document in transmission, including how data was 12 internally transmitted with each defendant, is 13 facially not relevant to the claims that are at issue 14 here.</p> <p>15 SPECIAL DISCOVERY MASTER FALK: Okay. 16 Thank you. I mean, let me just make some comments. 17 I guess in a way you've both made arguments that sort 18 of run through a lot of the disputes. I certainly 19 have read Judge Hammer's opinion, and I've spoken to 20 him and Judge Arleo, but that doesn't matter. I'm 21 focused on the relevance of the claims and defenses 22 in this case, and I'm certainly not -- I agree with 23 Judge Hammer's opinion, but it was -- it's a little 24 different from what's being asked now. That was 25 really relating -- first of all, it was without</p>	<p style="text-align: right;">Page 20</p> <p>1 But having said that, Judge Hammer 2 considered a broader issue request for documents 3 concerning any cyber security incidents on Quest's 4 system, and his ruling did come at an early point in 5 the case, and since then, plaintiffs have filed an 6 amended complaint on, I think, March 31, 2022, which 7 contains the following allegations. I'm not getting 8 to -- these are actual claims and from the complaint, 9 and I will say that the complaint, in broad terms, 10 has been sustained twice. Maybe different people 11 making the claims. But in other words, Judge Arleo 12 has already allowed certain claims to proceed and 13 other claims not to proceed. There's been no motion 14 to strike as to specific claims that were alleged. 15 That is something that you can do as well. In other 16 words, you could move 12(b)(6) -- I mean, most 17 opinions really dealt with standing, which in 18 database cases of course is the big issue, in my 19 view. The point is there have been -- there's been 20 no striking of allegations. So as to this issue, I'm 21 going through the allegations in the complaint, which 22 haven't been stricken and are still there, and I 23 can't imagine how you deny discovery in that case. 24 So paragraph 339 quotes the methods of 25 transmission of information between Quest and AMCA</p>
<p style="text-align: right;">Page 19</p> <p>1 prejudice, he said several times in the opinion. It 2 was an earlier time, and it's sort of distinguishable 3 from some of the claims now. In other words, he was 4 relating to -- I mean, I think he was focusing on 5 breaches in the defendant systems that had nothing to 6 do with this particular case -- not case, but the 7 allegation of the AMCA. As to some of the issues 8 there, rather than a broad request for documents, it 9 could be more easily done, perhaps with a request for 10 admission or an interrogatory.</p> <p>11 But what we're doing here and what I'm 12 doing here, and in no way -- I respect that opinion 13 and I agree with it, but I don't think that covers 14 what we're talking about here. So I'm going to deal 15 with request for production No. 36, and I'm going to 16 grant plaintiff's request on that because it's 17 discoverable. You have very different views on what 18 this case is about, and they're legitimate in a 19 certain way. The plaintiffs are saying -- they're 20 alleging negligence in terms of how the defendants 21 handled this kind of information, and the defendants 22 are saying we should only be talking about the AMCA 23 incident, and I think it's true. That's what this 24 case is about, but if you're doing discovery, I think 25 you're able to go a little further.</p>	<p style="text-align: right;">Page 21</p> <p>1 varied by Quest division. 2 "For example, from 2014 through 2019, 3 Solstas Lab Partners, a diagnostic lab company 4 acquired by Quest in 2014, e-mailed Excel files to 5 AMCA that included hundreds of patient names, 6 addresses, dates of birth, and Social Security 7 numbers. Security protocols were lax as often times 8 the password needed to access the file was listed in 9 the body of the e-mail. These files were then 10 forwarded without passwords and stored on AMCA 11 servers, which AMCA referred to as live files." 12 I'm quoting from my notes, but it's 13 pretty darn close. I can pull out the complaint. 14 Paragraph 343 goes further. 15 "Other Quest divisions had access to 16 AMCA's network, which allowed Quest and Optum to 17 upload files directly onto folders, stored on AMCA's 18 ODrive. This transfer method was extremely 19 un-secure, and AMCA internally acknowledged it posed 20 a serious security risk. Nevertheless, Quest 21 resisted adopting a more secure file transfer method 22 because of the ease of the data transfer process." 23 Paragraph 341. 24 "In many instances, Quest and Optum360 25 employees would simply e-mail patient account</p>

<p style="text-align: right;">Page 22</p> <p>1 information directly to AMCA, including by default 2 patient names, addresses, billing codes, physician 3 names, and ICD codes, among other highly sensitive 4 information." 5 Paragraph 408. 6 "Defendants fail to maintain the privacy 7 and security of their patients PHI and failed to 8 inform patients that their personal information was 9 disclosed. Indeed, defendants violated HIPAA by 10 failing to, A, maintain an adequate data security 11 system to reduce the risk of data breaches and cyber 12 attacks, B, adequately protect personal information, 13 C, ensure the confidentiality and integrity of 14 electronically protected health information created, 15 received, maintained, or transmitted in violation of 16 45 CFR 164.306(A) and (1), et cetera." 17 Paragraph 508. 18 "Defendants knew the manner in which 19 they way they maintained and transmitted patients 20 personal information violated plaintiffs and class 21 members by disregarding industry standard security 22 protocols to ensure confidential information was 23 securely transmitted and stored." 24 Paragraph 529. 25 "Defendants transmitted patients</p>	<p style="text-align: right;">Page 24</p> <p>1 maybe I don't even need to take that on. Maybe this 2 is something that after my ruling, if appealed or 3 sustained on appeal, you would work out with the 4 defendants. 5 MR. CECCHI: Thank you, judge. I think 6 we can do that because I'm not 100 percent sure. I 7 think that sounds right about caveating the time 8 frame, but I'll work with Donald and everyone else. 9 SPECIAL DISCOVERY MASTER FALK: I think 10 you should. That's coming up through a lot of the 11 things we're dealing with here. 12 MR. CECCHI: Right. 13 SPECIAL DISCOVERY MASTER FALK: And the 14 requests are very broad. Maybe that's okay and maybe 15 it's not. I'm new to the case, and when it comes to 16 the time frame, I made a little chronology as to when 17 things happened. 18 MR. CECCHI: My colleague, Chris Ayers, 19 we agreed to go back to '14, a five-year time frame. 20 The case started in '19, and they used AMCA during 21 that entire time period. 22 SPECIAL DISCOVERY MASTER FALK: But 23 Optum got involved in 2016? 24 MR. HOUSER: 2016. 25 SPECIAL DISCOVERY MASTER FALK: Work it</p>
<p style="text-align: right;">Page 23</p> <p>1 confidential medical information in an unencrypted 2 and un-redacted format to defendant's associates, 3 which was then accessed, viewed, and exfiltrated by 4 an unauthorized third party or parties, and thus, 5 defendants negligently released medical information 6 concerning plaintiff and California subclass 7 members." 8 I mean, I've just read that to you, and 9 these are -- you know, I gave you the parameters or 10 guardrails of discovery, which are broad. These are 11 actual claims that are in the complaint, and they're 12 making claims that the defendants were negligent in 13 the transmission and other things, of course, how it 14 was maintained, but the transmission of information. 15 It's right from the complaint. So there's no 16 question in my mind that it is discoverable. 17 Now, I'll go through each of the 18 requests for production under this section. I think 19 I answered the fact that it's discoverable. I don't 20 know about issues with respect to time and that kind 21 of thing. I mean, I think I saw somewhere that there 22 was an agreement, and you were going to have to tell 23 me as to a five-year relevant time period, which is 24 ECF 47414. Is that what governs everything or does 25 that just govern this particular thing? You know,</p>	<p style="text-align: right;">Page 25</p> <p>1 out and you have my number if there's a dispute and 2 I'll decide it on the spot, you know, after hearing. 3 MR. CECCHI: Thank you, judge. 4 SPECIAL DISCOVERY MASTER FALK: Issue 5 No. 2 of the first one is defendants internal 6 policies and procedures related to the detection of 7 PHI and/or PII, and there are requests for 8 productions and two interrogatories request for 9 production. 44 are communications between you and 10 AMCA related to data security protocols. I don't 11 know if you want to say anything about this. I think 12 I think that Optum said they would produce. 13 MR. HOUSER: Can I speak to the policy 14 issue? 15 SPECIAL DISCOVERY MASTER FALK: Yes. 16 MR. HOUSER: I want to be clear on the 17 friction point here. Third-party vendors, oversight 18 of third-party vendors, how you should deal with 19 sending data to third-party vendors. We've produced 20 those policies, and we've agreed to produce those 21 policies, and we've agreed to produce communications 22 about policies and requirements with respect to data 23 security. Those have been produced. The friction 24 point I think here, your Honor, is that the 25 plaintiffs are asking for our own internal policies,</p>

<p style="text-align: right;">Page 26</p> <p>1 how Optum360 handled employee data. We don't think 2 our internal policies are relevant at all with 3 respect to how we treated third-party vendors, the 4 requirements with respect to third-party vendors. We 5 think they have what they need here, and they have 6 all the relevant policies, and I think they point to 7 these cases, but those cases are focused on where the 8 alleged injury arises out of a failure to follow a 9 policy. If there's an employee that's injured in a 10 forklift accident, they plaintiff may sue the 11 employer and ask, "Show me your policies on how to 12 operate that forklift." Those are relevant in that 13 situation. That's not what they're asking for here. 14 We produced the policies that say -- tell me how you 15 handle third-party vendors. We've produced that. 16 They're asking for these internal policies that don't 17 relate at all to third parties or AMCA's data 18 security. 19 Again, I think they have what they need. 20 We produced all the documents related to AMCA 21 security, and we've produced some of our own internal 22 policies as well. So they even have our internal 23 privacy policies. Again, they have the relevant 24 policies. We produced some of the policies that they 25 say that they don't have, and I don't think this</p>	<p style="text-align: right;">Page 28</p> <p>1 negligent sort of in a broader sense of managing 2 private information, but I don't know. And I'll hear 3 from the other side. I'm not sure. Has this stuff 4 been produced? If it's been produced, that's 5 something that you have to talk about and bring back 6 to me if you have a real issue. 7 MR. AYERS: What ECF 474 is about it's 8 about the defendants objections and responses. We 9 get to some of the later disputes are about the 10 sufficiency of testimony or the sufficiency of 11 documents that they actually agreed to produce, but 12 these are their objections. So the material at issue 13 in 474 in this dispute letter have not been produced. 14 This is what the defendants have objected to. They 15 object to do producing these materials. We do not 16 have their policies and procedures to the scope and 17 to the extent of that, and this is to their 18 objections and responses. So it's not clear that 19 this material has been produced. We're here today 20 because it hasn't been produced. 21 Mr. Houser said we will get what we 22 need. That may be great that the defendants will get 23 what we need. It's based on how we pled the case. I 24 just want to note that they haven't produced the 25 policies and procedures that go to how they secured</p>
<p style="text-align: right;">Page 27</p> <p>1 discovery and all of our internal policies that don't 2 relate at all to third parties or the security of 3 AMCA are relevant here. 4 SPECIAL DISCOVERY MASTER FALK: Okay. 5 I'll be happy to hear from the other side, if you 6 have something to say. There seems to be a 7 fundamental disagreement as to what the case is 8 about. In other words, the plaintiffs seem to be -- 9 and it's pleaded that you, forgetting about AMCA, 10 were negligent and perhaps negligent per se. I heard 11 what you just said. I don't know what's been 12 produced or not produced. There's no question that 13 your policies about data security of personal or 14 private information are relevant to the case. You 15 say you've already given them that. I mean, if 16 you're talking about policies that talk about someone 17 injured on a forklift, you know, I don't see where it 18 harms anything, but I don't know that's what's being 19 asked for. In other words, the general request about 20 data security protocols, there's nothing more 21 relevant to the case, as far as I'm concerned -- no 22 matter how you look at it. I don't think it's just 23 third party. That's not the way the case is pleaded. 24 Do you understand what I'm saying about that part or 25 not? I know you disagree with it. Your client is</p>	<p style="text-align: right;">Page 29</p> <p>1 plaintiff's information in brick and mortar and how 2 they oversaw third parties. They want to look third 3 parties separate. They have a nondelegable duty. We 4 are entitled to policies and procedures of how they 5 secure their own home and how they secure their 6 garage. If they put a box of documents in a 7 plaintiff's garage, they can't say, "Leave the doors 8 unlocked. We're only going to give you policies and 9 procedures of how we secure our garage, but not our 10 home because we're treating that differently." We 11 get to understand how they holistically protect 12 patient data from the time that the patient enters 13 Quest. The case arose at the time of the data breach 14 incident. The cause of that database occurred years 15 before from their retention of AMCA, their 16 transmittal of protected data to AMCA, their 17 oversight of AMCA, and it all generates from their -- 18 what we contend is negligent and entirely deficient 19 policies and procedures of the protection of 20 protected information. 21 MR. CECCHI: Just one other comment, and 22 paragraph 408 of the operative pleading, which is 23 captioned "Defendants Violated HIPAA's Requirements 24 to Safeguard Data and Regulatory Guidelines." 25 SPECIAL DISCOVERY MASTER FALK: I'll</p>

<p style="text-align: right;">Page 30</p> <p>1 take it.</p> <p>2 MR. CECCHI: Subpart B and E. E is</p> <p>3 implement adequate policies and procedures to detect</p> <p>4 and protect security violations in violation of the</p> <p>5 CFR, implement technical policies and procedures for</p> <p>6 electronic information systems that maintain</p> <p>7 electronically protected health information.</p> <p>8 SPECIAL DISCOVERY MASTER FALK: I see</p> <p>9 it.</p> <p>10 MR. HOUSER: Can I respond briefly?</p> <p>11 SPECIAL DISCOVERY MASTER FALK: Of</p> <p>12 course.</p> <p>13 MR. HOUSER: Communications between you</p> <p>14 and AMCA about data security protocols. We are</p> <p>15 not -- we've produced our e-mails with AMCA that</p> <p>16 pertain to AMCA data security. We've done it.</p> <p>17 SPECIAL DISCOVERY MASTER FALK: Okay.</p> <p>18 MR. HOUSER: Similarly, with respect to</p> <p>19 45, we have negotiated a search term protocol. We</p> <p>20 agreed to custodians. It includes words and terms,</p> <p>21 like transmit, transfer. We've negotiated those</p> <p>22 search terms, and we've reviewed documents and we</p> <p>23 produced documents. On interrogatory No. 5, identify</p> <p>24 the individuals responsible for the policies and</p> <p>25 procedures. We identified for those individuals who</p>	<p style="text-align: right;">Page 32</p> <p>1 relevant. You know, it may be that a policy about</p> <p>2 when someone walks into the defendant's building when</p> <p>3 the maintenance people put up and it's raining and</p> <p>4 they put up a yellow sign, that kind of thing is not</p> <p>5 what we're talking about. If defendants -- because</p> <p>6 you're the defendants. AMCA is not here. I</p> <p>7 understand that they were responsible on a certain</p> <p>8 level, but if defendants have policies regarding how</p> <p>9 they handle confidential sensitive information,</p> <p>10 whether it's related to AMCA or not, those are the</p> <p>11 policies of the defendant, and it's pleaded. It's</p> <p>12 there, and I think it should be produced.</p> <p>13 Now, you say that it was produced.</p> <p>14 First of all, you said that they have that. The fact</p> <p>15 that an adversary or an adverse party has something</p> <p>16 does not mean that it shouldn't be produced in</p> <p>17 discovery. That's a basic discovery point. If they</p> <p>18 have it, because you've given it to them, that's a</p> <p>19 whole different point, but that's not something that</p> <p>20 was put before me yet. I suggest that you and all</p> <p>21 the fine lawyers around the table talk to each other</p> <p>22 and find out if it has been given. I haven't heard</p> <p>23 from the plaintiffs side yet -- you'd have to look at</p> <p>24 it. I don't know.</p> <p>25 MR. CECCHI: We'll report back. Our</p>
<p style="text-align: right;">Page 31</p> <p>1 had a role. They know this information, your Honor.</p> <p>2 So I think that they're drawing the circle very</p> <p>3 broadly when, in fact, we've produced a lot of this</p> <p>4 information. To the extent they're saying when</p> <p>5 someone walked in the door, that they need to know</p> <p>6 about what happened and the taking in of their data</p> <p>7 in every communication about how that data is handled</p> <p>8 when someone walks through the door divorced entirely</p> <p>9 from what happens to that data with respect to a</p> <p>10 third-party vendor, for instance. I think that's</p> <p>11 what Judge Hammer was getting at. If prior breaches</p> <p>12 are not relevant, then certainly the handling of data</p> <p>13 and all communications about policies that are wholly</p> <p>14 internal would not be relevant either, and I don't</p> <p>15 think the core allegations in this case have really</p> <p>16 changed as to what it relates to on data security and</p> <p>17 AMCA.</p> <p>18 SPECIAL DISCOVERY MASTER FALK: I</p> <p>19 appreciate what you have said and what you folks have</p> <p>20 said. There seems to be a difference of opinion as</p> <p>21 to what the real claims are, but I'm going by the</p> <p>22 claims that are extant and pleaded. I don't think</p> <p>23 you can read Judge Hammer's -- I know you can't read</p> <p>24 Judge Hammer's opinion too broadly. I think things</p> <p>25 like policies are -- policies for data security are</p>	<p style="text-align: right;">Page 33</p> <p>1 understanding, as Mr. Ayers articulated, is that it</p> <p>2 has not been. I don't think it's not right. It now</p> <p>3 has been determined relevant, so we will go back and</p> <p>4 assess whether it has been produced and fully</p> <p>5 responded to.</p> <p>6 MR. SIEGEL: Donald, just so we're clear</p> <p>7 and we know what we're looking for, are you saying</p> <p>8 that you have produced the internal policies that</p> <p>9 govern data security with respect to patient data at</p> <p>10 Quest?</p> <p>11 MR. CECCHI: Optum? Well, both.</p> <p>12 MR. AYERS: It's for both defendants.</p> <p>13 MR. HOUSER: Sure. I'm answering.</p> <p>14 MR. SIEGEL: You say things have been</p> <p>15 produced. What the judge just said with respect to</p> <p>16 the internal procedures with respect to internally at</p> <p>17 Quest and Optum, are you saying that's a category</p> <p>18 that has been produced?</p> <p>19 MR. HOUSER: I believe our internal</p> <p>20 policies have been produced. We did not agree that</p> <p>21 they're relevant. I can read you the Bates number,</p> <p>22 which has an enormous number of policies about</p> <p>23 internal policies with respect to data security, so.</p> <p>24 MR. SIEGEL: We can do it off the</p> <p>25 record.</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. HOUSER: I think these have been 2 produced. 3 MS. SULTANIAN: We identified in the 4 letter response the policies we produced. I have a 5 box of them here if anybody wants to look at them, 6 but they are all produced, and they are Quest 7 security management policy. I truly don't think that 8 there's actually a dispute here. I believe we've 9 produced. 10 SPECIAL DISCOVERY MASTER FALK: Great. 11 I hear you. I don't know. 12 13 (Whereupon, a brief recess was taken off 14 the record.) 15 16 SPECIAL DISCOVERY MASTER FALK: So we're 17 still dealing with issue two. 18 MR. CECCHI: I think we finished two. 19 MR. AYERS: I just wanted to just 20 address the defendants discussion of how they have 21 already produced these materials. 22 SPECIAL DISCOVERY MASTER FALK: Yes. 23 MR. AYERS: There were certain things 24 produced related to policies and procedures. They 25 would produce policies and procedures to vendors,</p>	<p style="text-align: right;">Page 36</p> <p>1 interrogatory No. 5. Identify all individuals 2 responsible for the development and implementation of 3 your policies and procedures, et cetera, et cetera. 4 I'm not sure. You tell me as to the level of dispute 5 about that. It seems reasonable. 6 MR. AYERS: Just to be clear about the 7 record is that the defendants did not respond to 8 those and stood on its objections to the 9 interrogatories. 10 MS. SULTANIAN: That's not correct. We 11 responded that during the relevant time period that 12 Carl Landorno and Joseph Adronetto were primarily 13 responsible for developing and revising such as 14 policies. 15 MR. AYERS: And I believe we're talking 16 about different interrogatories. Judge, you're 17 talking about interrogatory No. 5? 18 SPECIAL DISCOVERY MASTER FALK: Right. 19 MR. AYERS: And you were talking 20 about -- 21 MS. SULTANIAN: Interrogatory five. 22 MR. HOUSER: And the same goes with 23 Optum. We identified those individuals in our 24 interrogatory response. 25 SPECIAL DISCOVERY MASTER FALK: I think</p>
<p style="text-align: right;">Page 35</p> <p>1 such as AMCA. 2 SPECIAL DISCOVERY MASTER FALK: Right. 3 MR. AYERS: Obviously, the request goes 4 broader as judge had ruled. The policies and 5 procedures at issue is the policies and procedures 6 during the entire frame from 2014 to cover the 7 operative time frame that were in place. So 8 obviously, the parties can discuss what documents and 9 materials are responsive that have been withheld and 10 that would be produced in accordance with the court's 11 ruling. 12 SPECIAL DISCOVERY MASTER FALK: Okay. 13 That sounds good to me. 14 MR. CECCHI: Thank you. 15 SPECIAL DISCOVERY MASTER FALK: I'm 16 seeing where we are now. So we're done with the 17 entire thing or issue two? 18 MR. CECCHI: I think so as to what has 19 been produced, and we'll bring that to ground. I 20 think there might be some clarity vis-a-vis Donald. 21 Maybe they produced vendors, but as Chris pointed 22 out, it's a broader request. We'll hopefully not 23 have to come back to your Honor. We'll do our best. 24 SPECIAL DISCOVERY MASTER FALK: Yes. We 25 have two interrogatories in this, and I guess one is</p>	<p style="text-align: right;">Page 37</p> <p>1 that's true. Those two names were given. 2 MR. CECCHI: Respectfully, Heather, does 3 that response encompass, let's call it, the vendor 4 distinction or a broader response vis-a-vis policies 5 protecting health information more broadly? 6 MS. SULTANIAN: My understanding is that 7 it is the policies we produced. 8 MR. CECCHI: Which would be limited 9 potentially to vendors? 10 MS. SULTANIAN: I'm not sure there's 11 actually a dispute here. 12 MR. CECCHI: To the extent that it 13 encompasses the broader request we made, okay. To 14 the extent it does not, we will meet and confer 15 whether there are any further individuals that the 16 defendants have to identify to encompass the broader 17 request. 18 MS. SULTANIAN: That's fair. 19 SPECIAL DISCOVERY MASTER FALK: Got you. 20 And then there's interrogatory No. 8. Identify all 21 documents concerning your policies and procedures 22 related to the protection of plaintiffs PHI and PII, 23 including, but not limited to your business 24 associates protection of patients PHI and PII. This 25 includes the dates, the policies and procedures were</p>

<p style="text-align: right;">Page 38</p> <p>1 created, and any amendments thereto. I don't know if 2 there's an argument over relevance there. It seems 3 to have been -- I think Quest said they already 4 identified the information to the extent that the 5 request includes policies pursuant to AMCA or made to 6 the general public.</p> <p>7 MR. HOUSER: Your Honor, I think this is 8 a rehash of identifying the policies, and we 9 identified policies in our supplemental responses 10 consistent with our discussion to confer about the 11 rest of them. I think that's part of the discussion.</p> <p>12 SPECIAL DISCOVERY MASTER FALK: Okay. 13 And Optum says they used 33(d). Is that something 14 that you're going to talk about? I'm not in a 15 position to look at the 33(d) issues myself. Okay. 16 That's fine.</p> <p>17 Now, we get to an issue I'm going to 18 have a lot of questions about because of my age and 19 lack of familiarity with computer stuff. Issue No. 3 20 seems to have been sale of Quest patient data on the 21 dark web, and I guess the plaintiffs say that the 22 defendants unilaterally, which was actually used in 23 the argument, determined what relates to the AMCA 24 breach. I really would like to hear from you on 25 this, the sale of Quest patient data on the dark web,</p>	<p style="text-align: right;">Page 40</p> <p>1 they developed through the years to look through the 2 dark web and see if they can find traces of the data. 3 The dark web is not similar to the internet that we 4 use. You can't go in and type in "Google the dark 5 web." You go into these forums, for lack of a better 6 word. So you might see a message board where 7 Mr. Ayers. If he's a criminal, they will post, "Hey, 8 I'm selling this data. Here's a sample of the data 9 I'm selling and you. Other criminals can buy this 10 from me." You have to infiltrate these message 11 boards, and that's what our experts do. Because we 12 can't ask for an index of the dark web, we need to 13 know what is it that the defendants knew about this 14 data going to the dark web because we can never see 15 conclusively every single that took place. Does that 16 answer --</p> <p>17 SPECIAL DISCOVERY MASTER FALK: When I 18 started practicing law, and most of the time we 19 didn't have a computer -- we didn't have electric 20 typewriters. We didn't have nothing. I know how to 21 do basic stuff. This is just educating me. In other 22 words, we have computers here, and we have the 23 internet in this office. Can we get to the dark web?</p> <p>24 MR. LICHTMAN: No, unless there's 25 something that they haven't mentioned to me. Someone</p>
<p style="text-align: right;">Page 39</p> <p>1 and I almost need a little -- you know how you do in 2 patent cases. They do a little tutorial for the 3 judge, and I'm a former judge. What is plaintiff 4 seeking and how do you get this stuff? Just give me 5 a little basis. If there's a dispute, I'd be happy 6 to go over it. They're looking for information on 7 the sale of Quest patient data on the dark web.</p> <p>8 MR. CECCHI: Well, we think from the 9 plaintiffs perspective, judge, the defendant's 10 awareness that there is Quest and/or Optum patient 11 data on the web goes to the foreseeability of the 12 risk here, and by the same argument, their negligence 13 in not protecting the information. How you go about 14 assessing whether information is on the dark web, 15 maybe, Jason, you would speak to how our experts go 16 about doing that. Before you do that, we want to 17 know is what Quest and Optum knew about it.</p> <p>18 MR. LICHTMAN: Understanding how our 19 experts look at this I do think can help the court in 20 understanding in why it is we'd like to know what the 21 defendants knew. Our experts will go on to the dark 22 web and use essentially fake identification. It's 23 legal to do this, but they will use fake 24 identification, and they will go and pose as criminal 25 buyers on the dark web and use the identifications</p>	<p style="text-align: right;">Page 41</p> <p>1 who knew what they were doing, they would have to 2 download some programs that probably most of us do 3 not have on our computers, but it would be possible 4 to access the dark web if we knew what we were doing. 5 I doubt any of us in this room --</p> <p>6 SPECIAL DISCOVERY MASTER FALK: Young 7 people don't know.</p> <p>8 MR. LICHTMAN: That's very flattering to 9 call me young, your Honor.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: You're 11 welcome. So this is something that you need an 12 expert to do?</p> <p>13 MR. LICHTMAN: Yes.</p> <p>14 MR. SIEGEL: Let me just add this. Very 15 high level, just generally speaking, a couple other 16 things. It's not static either. So when you think 17 about people selling fake purses in Manhattan and you 18 see the police roll up and they move from 5th to 6 19 Street. That's what happens on the dark web. It is 20 not static, and things can affect it, like the war in 21 Russia and where these marketplaces are for data. 22 It's constantly shifting. That's the first part.</p> <p>23 The second part is a significant 24 component to transacting acting on the dark web, 25 buying and selling information, is based on trust</p>

<p style="text-align: right;">Page 42</p> <p>1 that you are a criminal. If you show up and you 2 manage to get to the dark web through a tour browser 3 as Judge Falk, my guess is you would have few takers 4 for inquiries about stolen medical information. In 5 other words, the experts that do this and test what 6 is out there develop over time identities that allow 7 them to engage with obviously a criminal element. 8 I think as we're talking about this case 9 and these questions, we do know, and there's no 10 dispute, that this data was compromised for over 11 seven months before it was at least made public, 12 longer perhaps until it was made public, but until 13 there was some sort of remediation. I think given 14 that long period of time and knowing what the 15 defendants knew about what was out there, because 16 many corporations do have the wherewithal 17 sophistication, resources to monitor what is out 18 there in these marketplaces. That's the gist of what 19 we're seeking in these requests. 20 MR. LICHTMAN: When Mr. Siegel was 21 speaking, I came up with an analogy that I hope may 22 help. Imagine this is a criminal marketplace, but in 23 a virtual space, not in a building. So when I lived 24 on the lower east side, they just moved it three 25 doors down, and it's the same kind of a concept,</p>	<p style="text-align: right;">Page 44</p> <p>1 looks at patient data on the dark web, and so they 2 refuse to produce anything related to what they have, 3 or they indicated what they will turn over, this is 4 Quest, is what they determined to be related to the 5 AMCA database, which is really unclear of what they 6 have, what they're withholding, and what they've 7 turned over, and what they know. That's what the 8 request is getting at, what did they know about the 9 actual Quest patients at issue, what information do 10 they know about their information being on the dark 11 web, not what they determined to be related to the 12 AMCA database or some determination that we have no 13 insight into, what information do they possess about 14 the patients at issue and their information available 15 on the dark web. 16 SPECIAL DISCOVERY MASTER FALK: We're 17 going to talk about that. So you go on with a 18 different name. Right? 19 MR. AYERS: You can. 20 SPECIAL DISCOVERY MASTER FALK: When I 21 was young, I had a stage name, Tony Madison. I'll 22 just put that out there. I didn't do anything wrong. 23 Tony Madison was my stage name. 24 Defendants, I don't really understand 25 this stuff.</p>
<p style="text-align: right;">Page 43</p> <p>1 except virtual space rather than physical space. 2 SPECIAL DISCOVERY MASTER FALK: Who pays 3 for it? 4 MR. LICHTMAN: I should be able to 5 answer your question, and I can't. 6 SPECIAL DISCOVERY MASTER FALK: This is 7 like crypto or something? 8 MR. CECCHI: No. 9 MR. LICHTMAN: No. 10 MR. CECCHI: You can access the dark web 11 if you have the right software and programs, and you 12 know where to go, as Mr. Siegel and Jason also 13 identified. We just can't go on there and get 14 visibility into it. What we want to know because 15 Quest and Optum are sophisticated and large 16 corporations, we want to know what they knew what was 17 out there vis-a-vis this data and their data. Maybe 18 they don't do that at all, but we doubt it. 19 MR. AYERS: What we do know is they do 20 have an entire department and team as Quest does and 21 Optum may as well, which is dedicated to responding 22 to concerns about patient data and looking at the 23 dark web. So this isn't something that they do 24 solely in response to AMCA breach or anything. This 25 is a team that they have in place all the time that</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. SULTANIAN: What I heard plaintiff's 2 counsel collectively talking about over here is two 3 different sets of information. One is the 4 information at issue. The Quest patients, that we 5 have already searched for logged or already produced, 6 and that's the subject of a separate dispute in an a 7 different letter. 8 SPECIAL DISCOVERY MASTER FALK: We will 9 get there. 10 MS. SULTANIAN: So really all that's at 11 issue here is whether Quest has to do a search for 12 anything about patient information for sale on the 13 dark web unrelated to the Quest patients potentially 14 impacted by the breach. 15 SPECIAL DISCOVERY MASTER FALK: When you 16 say, and I apologize not really knowing about this, 17 but if you use the analogy that they used that if 18 they're on whatever, Delancey Street or whatever and 19 they moved to Mulberry Street or whatever, can they 20 do a search to see what was happening on the dark web 21 back when the database occurred or not? 22 MS. SULTANIAN: That's what has been 23 searched for and logged or produced, and that's the 24 subject of the separate dispute. 25 SPECIAL DISCOVERY MASTER FALK: Okay.</p>

<p style="text-align: right;">Page 46</p> <p>1 MS. SULTANIAN: What we're talking about 2 now is whether Quest has to search for about patient 3 data for sale on the dark web not related to the 4 patients that were potentially impacted by the 5 breach. Mr. Cecchi said that the reason that they 6 need that is to prove that Quest knew that this could 7 happen, right, knew that there was a risk of patient 8 information being for sale on the dark web. So the 9 burden of doing a very broad custodial review to 10 reconfirm what they already have testimony on, I 11 think it's not proportionable. 12 SPECIAL DISCOVERY MASTER FALK: But I 13 think the statement was made that you do this as a 14 regular matter of business. 15 MS. SULTANIAN: There's an internal 16 team. They occasionally search the dark web to 17 determine if there's any Quest patient information 18 for sale, but again, we've searched for and/or 19 produced or logged what is related to the breach. 20 They're looking for, say, in 2014, if we ran some 21 search. 22 MR. CECCHI: Yes, and we don't think 23 there's any showing of any burden vis-a-vis if 24 they've been doing that, we're entitled to know that 25 because, again, it goes to their knowledge of their</p>	<p style="text-align: right;">Page 48</p> <p>1 Yes, there is patient data. We have to do this 2 better with our vendors. We have to shore up this 3 piece of our protocol. 4 MR. AYERS Lone of the things that 5 counsel talked about was custodial files, and the 6 objection to the production wasn't limited to running 7 search terms over custodial files. It was objection 8 to production of these materials. I have no doubt 9 that there are repositories that contain information. 10 One way to go about this, because it is relevant, it 11 goes to our claims and actual showing of damages, is 12 we can meet and confer to understand the 13 repositories, where they keep this information, and 14 what's in there, and then we can discuss how 15 burdensome it would be to produce this material. 16 They don't have to do complicated stuff to do these 17 stuff. These are billion dollar companies, and they 18 know where to obtain this information. 19 SPECIAL DISCOVERY MASTER FALK: I 20 apologize for needing to do this, but I think that in 21 some of the papers think saw. Defendants or Quest, 22 I'm not sure about Optum, admitted that there were 23 Quest's patients information on the dark web. Is 24 that true? 25 MS. SULTANIAN: The relevant part of the</p>
<p style="text-align: right;">Page 47</p> <p>1 duty to protect this information and take every step 2 under the statutes, under the privacy rules, and the 3 common law to protect this information. Yes, that's 4 what we're looking for. 5 MR. AYERS: And it goes to the value of 6 the knowledge of the data. So patient diagnosis 7 codes, they know that this stuff can be sold on the 8 dark web, and they know the value of it, and it goes 9 to damages. 10 SPECIAL DISCOVERY MASTER FALK: But 11 there's an agreement that it has been done. I don't 12 know if it's 2014. Are the specifics required? I'm 13 not sure I -- 14 MR. AYERS: They haven't turned over the 15 documents at all. There's been some general 16 testimony admissions that we got there. They do this 17 work, but they haven't turned over the documents. 18 SPECIAL DISCOVERY MASTER FALK: How 19 about a sample of it, or do you really want to see 20 everything? What does a document look like that 21 someone went on this dark web and they printed 22 something out or made a note of it or what? 23 MR. CECCHI: I think there would be 24 internal business records which reflect what the team 25 does, what they did, and how -- what they concluded.</p>	<p style="text-align: right;">Page 49</p> <p>1 question is, so you are aware, that on the dark web 2 that individuals PII and PHI are sold. That was the 3 question to a Quest 30(b)(6) witness. She answered 4 that, "Yes, that is an activity that occurs on the 5 dark web." So they have the information that this 6 can happen on the dark web. 7 SPECIAL DISCOVERY MASTER FALK: I got 8 you, and I appreciate that answer. I want to go a 9 little further. It impacts not only this, but other 10 questions that we'll deal with later. For example, 11 and this is expert stuff, I think, but I don't know. 12 Quest is a gigantic company. There's a lot of 13 customers. I don't know what you call them. But if 14 their information is on the dark web, can you tell 15 where it came from? In other words, can you tell and 16 how that the information on the dark web came from 17 the AMCA data breach or just from somewhere else, 18 which I think the plaintiffs would say you're still 19 responsible for and you'd deny that. How do you find 20 that out? 21 MS. SULTANIAN: Sometimes you can, and 22 sometimes you can't. Sometimes they indicate the 23 source of that data. Often, they do not. 24 SPECIAL DISCOVERY MASTER FALK: So that 25 if the question is, and I think somewhere the</p>

<p style="text-align: right;">Page 50</p> <p>1 question is, was Quest's clients or customers on the 2 dark web? That needs to be answered then because you 3 don't know where that is coming from. 4 MS. SULTANIAN: And the 30(b)(6) witness 5 was asked about that as well. I would certainly want 6 to know about it. I'm not aware of that. So that 7 was also answered in the 30(b)(6) deposition. I can 8 try to find the exact quote. 9 MR. AYERS: Generally, judge, we get 10 documents and take depositions. 11 SPECIAL DISCOVERY MASTER FALK: I agree. 12 MR. AYERS: And without the objection of 13 counsel shows that it's relevant and germane to the 14 issue. We probably want documents on it. One of the 15 things that counsel said that I think really goes to 16 the heart of this dispute, she said that sometimes 17 you can determine the source of the information, but 18 many times you can't, and what they've agreed to 19 produce is information related to patient information 20 on the dark web that they have determined to be part 21 of the AMCA as a result of the data beach. We're 22 only getting what they can. We're not getting 23 anything else. And obviously, the dark web is vast. 24 They have a team that's dedicated doing this every 25 day. They have this information, and if they don't,</p>	<p style="text-align: right;">Page 52</p> <p>1 the labs specifically? I'm not sure I understand it. 2 Do you know what I mean? 3 MR. AYERS: We're asking for the 4 information that they have related to the sale of 5 this type of data. 6 SPECIAL DISCOVERY MASTER FALK: This 7 type of data, not specific people? 8 MR. AYERS: Which encompasses the 9 plaintiffs here, not to the exclusion of them. It's 10 broader than simply our plaintiffs that we allege, 11 but it definitely encompasses the plaintiffs that we 12 hear. If they have information related to any 13 plaintiff, that should be produced and is responsive 14 to this request. It's more. We don't have -- they 15 haven't been willing to provide everything on the 16 plaintiff that happened here or broader the value of 17 that information that is on the dark web. 18 MR. CECCHI: One other narrow point, 19 when the breach was discovered, no doubt they did an 20 investigation or they should have done an 21 investigation and try to understand the impact 22 vis-a-vis their patients, vis-a-vis the dark web. 23 MR. HOUSER: Can I respond quickly? 24 We're talking about a couple of things flying around. 25 You have the AMCA breach, and the dark web search is</p>
<p style="text-align: right;">Page 51</p> <p>1 just say so, but they don't. This is obviously a 2 live dispute because there is information that 3 they're withholding that they have. The reality is, 4 judge, is most likely they've already looked at this 5 issue, and they're sitting likely on the document. 6 They don't have to go out and do complicated searches 7 and all that. A lot of the stuff is available for 8 them, and they're resting on an objection to its 9 production. It doesn't just go to the fact that they 10 know information is for sale on the dark web. It 11 goes to the type of information available on the dark 12 web, their knowledge, and the information they have 13 about the value of that information because that goes 14 exactly to the damages. They're going to get up and 15 have a expert and it's going to say, "Birthdays, 16 Social Security numbers, that's not valuable. That's 17 worth pennies," but they may be sitting on and likely 18 have information about the value of pieces of 19 information, diagnosis codes, and something like 20 that. That's germane to proving the claims, but also 21 determining the damages related to our claims. 22 SPECIAL DISCOVERY MASTER FALK: I hear 23 you. Did you give them a list of names? Are you 24 asking that they produce anything that they have ever 25 found on the dark web or just, you know, customers of</p>	<p style="text-align: right;">Page 53</p> <p>1 information out there based on the AMCA breach and 2 Mr. Ayers is -- we've told him that, and he knows it. 3 I think it's important to look to the time period 4 pre-breach. They're saying if there's any patient 5 information on the dark web for this multiple-year 6 period, we need to know about it, because that will 7 tell us that there was a risk to data. Everyone 8 knows there's a risk to data -- 9 SPECIAL DISCOVERY MASTER FALK: Agreed. 10 And I'll let you go on. They're asking for 11 documents. This is a request for production of 12 documents. They can question your 30(b)(6) or other 13 witnesses. Do you have documents that would be 14 responsive to this? Because I think they should be 15 turned over. If you want to do it for attorneys eyes 16 only to start or if you want me to do it an in-camera 17 review. I don't see the harm in doing that stuff. 18 MS. SULTANIAN: It would be immensely 19 burdensome. I can assure you we're not just sitting 20 on it. We would have to do a custodial review based 21 on search terms. It would be more than 7,000 22 documents, which if you compute attorney time, that's 23 around 150 hours of attorney time for privilege as 24 well. 25 MR. CECCHI: This is an 11 million</p>

<p style="text-align: right;">Page 54</p> <p>1 person data breach.</p> <p>2 MS. SULTANIAN: Can I finish?</p> <p>3 MR. CECCHI: I apologize.</p> <p>4 MS. SULTANIAN: And it's for just the</p> <p>5 pre-breach period, and it would be just to prove this</p> <p>6 simple point that Quest was aware that patient data</p> <p>7 could be sold on the dark web. It's not</p> <p>8 proportional.</p> <p>9 SPECIAL DISCOVERY MASTER FALK: So could</p> <p>10 you propound a request for admission that would get</p> <p>11 you the same information?</p> <p>12 MR. AYERS: We know they have the</p> <p>13 information. We know they have the information. We</p> <p>14 don't know what the information is. We don't have</p> <p>15 access to that information to do a request for</p> <p>16 admission. 7,000 is nothing. We've all been a part</p> <p>17 of major litigation. There's an MDL involving 11</p> <p>18 million people. 7,000 is really a drop in the</p> <p>19 bucket. There's hundreds of thousands of documents</p> <p>20 that are generally produced. Generally, the</p> <p>21 defendants produce more documents than the plaintiff.</p> <p>22 We're talking about the defendant's conduct and what</p> <p>23 the defendants did. All the plaintiffs did was they</p> <p>24 used their service. They went there to get stuff --</p> <p>25 here we have -- it's not disproportionate. Quest has</p>	<p style="text-align: right;">Page 56</p> <p>1 a second because value of how a criminal would pay</p> <p>2 for it, how does it tie into it?</p> <p>3 MR. LICHTMAN: This is something that</p> <p>4 came up in another case that Norm and I have</p> <p>5 together. Plaintiffs, we presented our damages</p> <p>6 theory, and we said this information has value, and</p> <p>7 one way we calculate the value is looking at the case</p> <p>8 of Marriott, black market transactions, and this</p> <p>9 information has inherent value, and Marriott</p> <p>10 responded that no, no, no, it has no value. What do</p> <p>11 we find out as it comes back from the fourth circuit</p> <p>12 that Marriott has its own calculation of the value</p> <p>13 that we're claiming. If you have done a valuation,</p> <p>14 it is for expert discovery to determine whether the</p> <p>15 valuation that defendants has done applies to</p> <p>16 plaintiffs as well. So the idea being that a</p> <p>17 valuation that defendants have placed on the data --</p> <p>18 I understand that the defendants will claim that the</p> <p>19 data is not relevant to damages, and we may have just</p> <p>20 a different view. Mr. Siegel and I just went through</p> <p>21 this in another case. Their expert says that model</p> <p>22 is ridiculous, and lo and behold, that was actually a</p> <p>23 model that they had been using all the time that they</p> <p>24 didn't produce to us. They've got these numbers --</p> <p>25 MR. HOUSER: I'm not saying that we have</p>
<p style="text-align: right;">Page 55</p> <p>1 produced less than 5,000. They're talking about</p> <p>2 producing -- it's really not burdensome. What we</p> <p>3 haven't discussed is that there is noncustodial</p> <p>4 sources of this information as well. The idea that</p> <p>5 this is all sitting in e-mails is not realistic given</p> <p>6 the scope and size of Quest. They would this stuff</p> <p>7 sitting in basically a variety of sources that aren't</p> <p>8 e-mails. It would be up on the document management</p> <p>9 systems and things like that.</p> <p>10 MR. CECCHI: We can definitely -- as</p> <p>11 Chris said, we can meet and confer where it is stored</p> <p>12 and where the non-custodials are. We can also take</p> <p>13 the damage piece off if we knew it was valuable, and</p> <p>14 they're not going to contest damages. We can do that</p> <p>15 too.</p> <p>16 MR. HOUSER: You're saying to prove</p> <p>17 what? You're saying that there was a knowledge that</p> <p>18 information was out there on the dark web and that</p> <p>19 thieves wanted to steal data.</p> <p>20 MR. AYERS: That's one component.</p> <p>21 MR. HOUSER: What's the other?</p> <p>22 MR. AYERS: We wanted to establish that</p> <p>23 you're not only aware that it sold, but the value</p> <p>24 that Quest and Optum put on this data.</p> <p>25 MR. HOUSER: Let's talk about value for</p>	<p style="text-align: right;">Page 57</p> <p>1 the numbers, Jason. That's literally not what we're</p> <p>2 saying. That's a misstatement.</p> <p>3 SPECIAL DISCOVERY MASTER FALK: What's</p> <p>4 the objection? What's your primary objection to</p> <p>5 producing all this?</p> <p>6 MS. SULTANIAN: It's proportionality,</p> <p>7 your Honor.</p> <p>8 SPECIAL DISCOVERY MASTER FALK: It's a</p> <p>9 big case.</p> <p>10 MS. SULTANIAN: I understand it's a big</p> <p>11 case. We have done months of document review. So we</p> <p>12 had to look at what is the value of what they're</p> <p>13 seeking from this particular request as compared to</p> <p>14 the burden that it would impose.</p> <p>15 SPECIAL DISCOVERY MASTER FALK: What is</p> <p>16 the burden? Give me a number. I don't mean right</p> <p>17 now. It's a big case, and I don't know. How much</p> <p>18 work does it take? How much effort does it take?</p> <p>19 The issue is how relevant and what will it be. In a</p> <p>20 case of this size, I'm not -- I hear that there might</p> <p>21 be 7,000 documents. I'm not persuaded that it's</p> <p>22 disproportional.</p> <p>23 MS. SULTANIAN: So the back of the</p> <p>24 envelope, we're looking at 100 to 150 hours of</p> <p>25 attorney time for this one thing to say that we were</p>

<p style="text-align: right;">Page 58</p> <p>1 aware that patient could be on the dark web. That's 2 a separate dispute, our privilege analysis after the 3 data breach. But this is, you know -- anything 4 unrelated to the data breach to prove that it could 5 be on the dark web. 6 SPECIAL DISCOVERY MASTER FALK: What 7 about -- I'm just throwing this out -- I'll confess, 8 in 47 years of practice and being a magistrate judge, 9 I haven't come across this before. The point being, 10 what about some random sampling? Would that help or 11 would you be satisfied with that on the plaintiffs 12 side or do you want to know every single one of the 13 things they have on the dark web? Or are you going 14 to take this information and see if they were Quest 15 customers? Is that part of what we're talking here? 16 Maybe I don't understand the whole thing. Sometimes 17 you know how it got on the dark web, and sometimes 18 you don't, and you're asking what they have seen on 19 the dark web or did they do and what have they seen. 20 MR. AYERS: There's different layers to 21 their knowledge and the documents that they have. As 22 Mr. Lichtman indicated in another matter, defendants 23 do this type of analysis -- so one thing is we could 24 meet and confer about our sources of the data, where 25 this information is stored, and what information they</p>	<p style="text-align: right;">Page 60</p> <p>1 SPECIAL DISCOVERY MASTER FALK: Okay. 2 MR. AYERS: Let's assume it's 7,000 3 based on these back of the envelope search terms. We 4 do know that their information of the knowledge of 5 this type of information being on the dark web and 6 the value -- and their estimations of the value and 7 knowledge of the value of this type of information. 8 Each different data element on the dark web is 9 incredibly valuable because not only does it go to 10 their -- the negligence of their failure to safeguard 11 the information, knowing the value of it, but then it 12 goes to calculation of damages on the back end to 13 understand that this is how our plaintiffs have been 14 injured and damaged and to help refute some of the 15 anticipated expert testimony, which you'll say no, 16 no, no. This information is worthless and valueless, 17 and it's -- it has no value. So it's very germane 18 and very material. Again, if your Honor wants, we 19 can discuss with the defendants to go through where 20 it's stored and what type of information it is, et 21 cetera, and then we can come back if we have any 22 disputes after that. 23 MS. SULTANIAN: Can I be clear? What 24 they're seeking is not Quest internal valuations of 25 data, but what they're talking about now is not what</p>
<p style="text-align: right;">Page 59</p> <p>1 have. We can talk about it and determine. We're not 2 asking for necessarily every last shred of paper that 3 they have on the dark web. Certain information is 4 going to be more relevant than other information. 5 What we have is a back of the envelope analysis that 6 wasn't included in any of the papers. They objected 7 based on proportionality. We briefed this issue, and 8 not once did the defendants ever decide to take up 9 burden of the defense. We have a bunch of search 10 terms that defendants say they kind of created on 11 their own unilaterally without any disclosure to the 12 plaintiffs and assessment of attorney time without 13 any discussion or input from the plaintiffs. All in 14 and all, even at some of the inflated -- at the 15 hourly rates, we're talking about \$150,000 in a case 16 with many more zeros, and I don't even know they 17 should just produce the stuff based on their own 18 representation of burden. 19 SPECIAL DISCOVERY MASTER FALK: What 20 does it prove? I hear you. I agree. The numbers 21 are de minimus -- not de minimus at all. But the 22 point is what is this going to prove having every one 23 of these documents? 24 MR. AYERS: Again, I can't tell you what 25 every last document --</p>	<p style="text-align: right;">Page 61</p> <p>1 their request is. I just want to be clear on that. 2 MR. AYERS: It would be encompassed with 3 it. 4 SPECIAL DISCOVERY MASTER FALK: I don't 5 know. I'm being very honest with you. Yes, I think 6 you should meet and confer. Two, defendants should 7 produce, you know, 25 of such documents, something 8 like randomly sample, just to aid the discussion, and 9 then you should come back to me, and I want to look 10 through and do an in-camera review, and when you come 11 back to me, if the objection is just proportionality, 12 I'm going to want specifics, and then we'll talk 13 about it. It may be something that we split the 14 costs or it may be something we just order. I'm not 15 impressed by 7,000 documents. I don't know. Is 16 there privilege involved? Are you reviewing it for 17 privilege? 18 MS. SULTANIAN: We would need to review 19 before. 20 SPECIAL DISCOVERY MASTER FALK: I don't 21 know how it works. 22 MR. CECCHI: In terms of your Honor's 23 ruling, the random sampling, we'll obviously need 24 those 25 documents. 25 SPECIAL DISCOVERY MASTER FALK: Yes,</p>

<p style="text-align: right;">Page 62</p> <p>1 that's what I'm suggesting.</p> <p>2 MR. CECCHI: Thank you.</p> <p>3 SPECIAL DISCOVERY MASTER FALK: I don't</p> <p>4 think we can talk about this too much further, at</p> <p>5 least I can't without knowing -- having some idea</p> <p>6 what we're talking about here, and I just don't --</p> <p>7 and I think it will help you as well.</p> <p>8</p> <p>9 (Whereupon, a discussion takes place off</p> <p>10 the record.)</p> <p>11</p> <p>12 MR. CECCHI: Revenue received from</p> <p>13 AMCA --</p> <p>14 MS. SULTANIAN: You skipped an issue.</p> <p>15 MR. CECCHI: Compensation paid to AMCA</p> <p>16 and other medical billing agencies.</p> <p>17 SPECIAL DISCOVERY MASTER FALK: RFP 24,</p> <p>18 Quest says they will produce. So I guess that's not</p> <p>19 a dispute. And Optum will not produce documents</p> <p>20 sufficient to identify all amounts you paid to AMCA</p> <p>21 for its services for the period of 2012 to the</p> <p>22 present, including total amounts by amounts and</p> <p>23 quantities, number of patients, tests, et cetera.</p> <p>24 Quest will produce pursuant to Rule 34, and Optum</p> <p>25 will not produce. So what's there to say about this,</p>	<p style="text-align: right;">Page 64</p> <p>1 Honor wants to see these, because you're kind of</p> <p>2 looking at a whole record there. To the extent that</p> <p>3 even is -- your Honor, if you keep going, that's just</p> <p>4 the cover e-mail. Do you see there it's teeny print?</p> <p>5 It says a month-to-month basis, and if you look at</p> <p>6 the top, you will see AMCA month, year, gross</p> <p>7 placements. Right? CCS, that's another vendor.</p> <p>8 Placements, primary, recovery, and that's the amount</p> <p>9 recovered on the debt.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: No, it's</p> <p>11 very helpful.</p> <p>12 MR. HOUSER: It's month-by-month. I</p> <p>13 don't mean to beat a dead horse on this. The</p> <p>14 financial information in connection to the data</p> <p>15 security, I disagree with this, but they have a lot</p> <p>16 of this data.</p> <p>17 SPECIAL DISCOVERY MASTER FALK: It's</p> <p>18 interesting that Quest that will produce it, but</p> <p>19 Optum won't.</p> <p>20 MR. HOUSER: That's Optum. We both</p> <p>21 produced it.</p> <p>22 SPECIAL DISCOVERY MASTER FALK: Then we</p> <p>23 don't have a dispute.</p> <p>24 MR. HOUSER: There's a pre-time period</p> <p>25 and a post-time period.</p>
<p style="text-align: right;">Page 63</p> <p>1 folks?</p> <p>2 MR. HOUSER: There are a couple things</p> <p>3 to say about this. One, I just want to take</p> <p>4 relevancy to start. The compensation paid to a</p> <p>5 vendor does not bear on if there was adequate data</p> <p>6 security of the vendor or if the defendants exercise</p> <p>7 reasonable oversight. That's point one. There's no</p> <p>8 link, other than the plaintiffs saying it's relevant.</p> <p>9 So therefore, it's relevant, so produce the</p> <p>10 documents. They don't cite any cases and so on and</p> <p>11 so forth. The other point is they know the</p> <p>12 compensation structure. Our 30(b)(6) witness</p> <p>13 testified that the compensation gets paid to vendors.</p> <p>14 All of the vendors get paid the same. It's a</p> <p>15 percentage. One is called a primary and a secondary,</p> <p>16 and there's a percentage of the recovery for those</p> <p>17 that get paid as compensation. So they know the</p> <p>18 compensation that's paid. They have that. We've</p> <p>19 also produced documents that show on a monthly basis</p> <p>20 the amount of gross placements, which means how much</p> <p>21 debt went to the vendor. AMCA and other vendors were</p> <p>22 both primary and secondary. Gross and primary were</p> <p>23 both primary and secondary. And Quest did too. One,</p> <p>24 I think these were produced. I don't think that</p> <p>25 compensation is relative to data security. If your</p>	<p style="text-align: right;">Page 65</p> <p>1 SPECIAL DISCOVERY MASTER FALK:</p> <p>2 Plaintiffs, is there a dispute here?</p> <p>3 MR. CECCHI: Just one second, your</p> <p>4 Honor. I'm just a little confused because Quest</p> <p>5 indicated or Optum indicated that they would not</p> <p>6 produce, but they handed us documents that have been</p> <p>7 produced. We can take a look at this and assess</p> <p>8 whether -- we might just have some questions, and we</p> <p>9 can confer about what it is.</p> <p>10 MR. AYERS: So are you saying that this</p> <p>11 document is responsive in answering these requests,</p> <p>12 request 24 and 25?</p> <p>13 MR. HOUSER: I'm saying that --</p> <p>14 MR. AYERS: You didn't object.</p> <p>15 MR. CECCHI: Optum is Bates 5326 at the</p> <p>16 end.</p> <p>17 MR. AYERS: So you produced the</p> <p>18 responsive documents. So you're not standing on your</p> <p>19 objection. Correct?</p> <p>20 MR. HOUSER: Those have been produced,</p> <p>21 and they were produced because they're relevant.</p> <p>22 MR. AYERS: But you're not withholding</p> <p>23 documents based on your objection?</p> <p>24 MR. HOUSER: I don't believe that we</p> <p>25 are. We can go back and talk about it. To the</p>

<p style="text-align: right;">Page 66</p> <p>1 extent that you need data, that's the data that</p> <p>2 you're asking for.</p> <p>3 MR. CECCHI: Donald, quick question on</p> <p>4 the Optum document. This is for '15 through 2019?</p> <p>5 SPECIAL DISCOVERY MASTER FALK: Yes. I</p> <p>6 think you can meet and confer on this one.</p> <p>7 MR. SIEGEL: These are placements.</p> <p>8 Right? These were the amounts that Quest and Optum</p> <p>9 are placing with these debt collectors?</p> <p>10 MR. CECCHI: That's the next one.</p> <p>11 MR. SIEGEL: That was the amount of</p> <p>12 money paid to the debt collectors?</p> <p>13 SPECIAL DISCOVERY MASTER FALK: Go</p> <p>14 ahead.</p> <p>15 MS. SULTANIAN: So we handed you the</p> <p>16 documents that show placements, realization rates,</p> <p>17 that kind of figure.</p> <p>18 MR. CECCHI: For Quest?</p> <p>19 MS. SULTANIAN: For Quest. I'm not</p> <p>20 speaking for Optum.</p> <p>21 MR. CECCHI: Okay.</p> <p>22 MS. SULTANIAN: And there's very clear</p> <p>23 testimony in the record that all the collections</p> <p>24 agencies were paid a percentage of their collections,</p> <p>25 so, you know.</p>	<p style="text-align: right;">Page 68</p> <p>1 whatever you say.</p> <p>2 MR. HOUSER: We can meet and confer on</p> <p>3 it.</p> <p>4 MR. AYERS: I want to understand if we</p> <p>5 have any ripe dispute.</p> <p>6 MR. HOUSER: I don't think we do.</p> <p>7 MR. CECCHI: Revenue.</p> <p>8 SPECIAL DISCOVERY MASTER FALK: These</p> <p>9 all relate to that same issue. In other words -- and</p> <p>10 I'm not going to say one way or the other in terms of</p> <p>11 relevancy. I guess the argument from the plaintiffs</p> <p>12 side could be, you know, if Quest was for Optum -- so</p> <p>13 much more successful than other agencies, and two, if</p> <p>14 Quest or Optum knew of the -- that they weren't</p> <p>15 protecting the data that would be like a motivation</p> <p>16 for using Quest or Optum. That could be one</p> <p>17 argument. I could make a lot of other arguments.</p> <p>18 MR. SIEGEL: Using AMCA. You're exactly</p> <p>19 right.</p> <p>20 MR. AYERS: It also -- there's a</p> <p>21 potential for a damage model based upon the</p> <p>22 compensation that's paid to AMCA and the amount of</p> <p>23 revenues and money that the defendants recouped</p> <p>24 versus what they potentially wrote off as bad debt.</p> <p>25 The potential of those revenues by using a deficient</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. CECCHI: And the Quest production</p> <p>2 you contend, which is Bates 22553, has the</p> <p>3 realization rate as well?</p> <p>4 MS. SULTANIAN: It does. We can meet</p> <p>5 and confer.</p> <p>6 MR. CECCHI: Does the Optum document</p> <p>7 have the realization as well?</p> <p>8 MR. HOUSER: I believe it does.</p> <p>9 MS. SULTANIAN: That's a native</p> <p>10 document, and I included this.</p> <p>11 MR. CECCHI: This was helpful. Thank</p> <p>12 you.</p> <p>13 MR. AYERS: Just so the record is clear,</p> <p>14 the defendants are not standing on its objection --</p> <p>15 MR. HOUSER: I told you this before.</p> <p>16 I'm not agreeing that compensation is relevant.</p> <p>17 MR. AYERS: But you're not standing on</p> <p>18 your objection.</p> <p>19 MR. HOUSER: You're literally holding</p> <p>20 documents that are responsive.</p> <p>21 MR. AYERS: So you're --</p> <p>22 MR. HOUSER: I don't want to agree to</p> <p>23 anything. I don't know what kind of gotcha you're</p> <p>24 trying to get.</p> <p>25 MR. CECCHI: He's not going to agree to</p>	<p style="text-align: right;">Page 69</p> <p>1 debt collection company in their revenues, they</p> <p>2 continued to use this company that they knew was</p> <p>3 deficient. So their revenues and profits off of that</p> <p>4 could be used to calculate damages.</p> <p>5 SPECIAL DISCOVERY MASTER FALK: I</p> <p>6 understand why plaintiffs want it, but it's probably</p> <p>7 to the outer reaches. We'll talk about it further if</p> <p>8 you have a dispute.</p> <p>9 MR. CECCHI: We may not.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: There's</p> <p>11 no reason to keep it secret, as far as I'm concerned.</p> <p>12 That's what you seem to be saying too when I'm</p> <p>13 pointing to the Quest/Optum side. You'll do it. I'm</p> <p>14 not doing much more on this until you discuss it, and</p> <p>15 then I'll be happy to make a finding in terms of</p> <p>16 relevance for discovery. There's whole other topic</p> <p>17 if it's admissible at trial, and that's up to Judge</p> <p>18 Arleo. I could argue it other ways as well. It's</p> <p>19 stuff that the jury may be interested in, if you get</p> <p>20 to a jury.</p> <p>21 Okay. Are we on data security and</p> <p>22 information technology expenses?</p> <p>23 MR. HOUSER: I think so.</p> <p>24 SPECIAL DISCOVERY MASTER FALK: And both</p> <p>25 Quest and Optum. So the documents sufficient to show</p>

<p style="text-align: right;">Page 70</p> <p>1 all information technology expenses, including detail 2 of account by account level of data from 2012 to the 3 present. Both the defendants are not going to 4 produce that.</p> <p>5 MR. CECCHI: And this is something our 6 experts definitely would want to see in assessing and 7 issuing reports vis-a-vis our negligence claims and 8 our CMIA claim, what they're doing, what they're 9 spending to protect the data because there are 10 comparator, industry comparators that we can utilize, 11 as an extreme example. If they're spending \$5, but 12 the industry standard say it's \$20, our experts would 13 want to know.</p> <p>14 MR. HOUSER: Your Honor, they're asking 15 for every single internal IT expense and every data 16 security expense on our internal systems. So Quest 17 or Optum's purchase of a copier, of a mouse. They 18 want to know on an item-by-item detail. That's what 19 they're requesting right free. It's this free 20 floating negligence to say that if I could say they 21 should have spent more on security for internal 22 systems. It had nothing to do with AMCA. I think 23 that's relevant to their oversight of AMCA or AMCA 24 security. They're not connected. Their damages, 25 there has to be a duty, a breach, and a cause for</p>	<p style="text-align: right;">Page 72</p> <p>1 spending on security, if that can be, you know -- if 2 there was, say, a line item on a budget or a few line 3 items, you're right, and you can say this didn't have 4 anything to do with AMCA. But it's all part of -- 5 first of all, they don't agree that there's really 6 the defining claim being made by the pleading. Judge 7 Hammer has weighed in and certainly said it can't get 8 discovery on the breaches on your own systems, and of 9 course it's AMCA, but the claim in this case the 10 defendants, the named defendants, are negligent in 11 that area, and they're to be held responsible for 12 what happened at AMCA. I'm going to suggest on this 13 one that you do meet and confer. I think that the 14 subject is relevant. It's like counsel said. You 15 know, that the cost of every mouse purchased or every 16 computer, that's not the way to go. But I got to 17 believe that the defendants have some kind of 18 analysis or breakout of how much they spend on 19 security, and I can see that being relevant. It may 20 even be helpful, as I say, to the defendants. Why is 21 it not relevant though, other than Judge Hammer's 22 opinion?</p> <p>23 MR. HOUSER: Because AMCA was 24 responsible for its security, and their claims relate 25 to allegations that we did not properly oversee</p>
<p style="text-align: right;">Page 71</p> <p>1 damages. It does not arise from an alleged failure 2 to spend enough money internally on IT expenses for 3 the defendants.</p> <p>4 SPECIAL DISCOVERY MASTER FALK: But 5 that's what you say, and they will say something 6 different. In the briefing, the reliance was on 7 Judge Hammer's decision. I totally agree with your 8 initial statement. It's overbroad. In other words, 9 I think you should discuss it and narrow it. I'm 10 sure you have a budget or a line item for security. 11 I don't know if you do, but I certainly think that 12 would be relevant to this kind of a claim. The whole 13 claim is that the defendants didn't have the proper 14 security. You know, that really is the claim; isn't 15 it?</p> <p>16 MR. HOUSER: AMCA had the breach. It's 17 not about whether Optum or Quest systems, did they 18 spend enough money on their firewall at Quest or 19 Optum.</p> <p>20 SPECIAL DISCOVERY MASTER FALK: Maybe 21 not, but this may be helpful to you, actually. I'm 22 not saying one way or the other -- I don't know. But 23 my point is the individual line item thing is a 24 little rough. I think that's too much. But on the 25 other hand, you know, how much Quest or Optum was</p>	<p style="text-align: right;">Page 73</p> <p>1 AMCA's data security. That's where their claims 2 arise out of. That's what they're arguing, is with 3 respect to their negligence claim and the core 4 negligence and negligence per se claim and security 5 related. If it's talking about security, it's about 6 AMCA security and about our oversight of security. 7 That's the nub there.</p> <p>8 MR. CECCHI: It's a nondelegable duty. 9 It arises long before the breach. It's from the 10 beginning when they take the blood and they produce 11 the records and give it to AMCA. When AMCA has it, 12 it's just as much their duty as AMCA. All this 13 information goes to prove a continuum of negligence, 14 including how much they spent.</p> <p>15 SPECIAL DISCOVERY MASTER FALK: 16 Understood. And I'm going by the pleadings, and 17 that's in the pleadings. They're saying that you 18 were negligent there, and there's all kinds of other 19 things, punitive damages and intentional stuff. 20 That's all in the case, as far as I'm aware. I read 21 both of Judge Arleo's opinions. I think you should 22 talk to one another. Every single document that had 23 to do with a computer or your own internal security 24 is not going to be helpful, and I think that is not 25 proportionate. I think sort of the amount that you</p>

<p style="text-align: right;">Page 74</p> <p>1 spent on security, if you have that, if that can be 2 done, that should be done. There's no reason not to. 3 On the other hand, if that doesn't work, if you can't 4 work this out, you come back to me, and I'll make a 5 more specific decision. 6 Now, the next one is issue four -- 7 sorry, volume or percentage of sales sent to 8 collection agencies. I need clarification on this. 9 The questions seem to all again go to -- and I could 10 be wrong, and I'll be happy to hear from anyone on 11 the plaintiff's side. Sort of the motivation of why 12 use AMCA. I don't know. Or comparing AMCA to other 13 collection agencies. I had trouble really 14 determining the relevance of that. Once again, I 15 think it goes to the motivation. In other words -- 16 if AMCA was brutally successful in collecting in 17 comparing to other agencies, that might be a reason 18 to go there and to close your eyes, assuming you knew 19 or they knew or Quest knew that their security was 20 weak. I don't know. 21 MR. SIEGEL: You put your finger on the 22 theory. 23 SPECIAL DISCOVERY MASTER FALK: I 24 thought so. 25 MR. SIEGEL: Notwithstanding the</p>	<p style="text-align: right;">Page 76</p> <p>1 SPECIAL DISCOVERY MASTER FALK: Do you 2 know? 3 MR. SIEGEL: I don't know. We can rely 4 on -- 5 MR. HOUSER: And there was testimony at 6 a deposition of our corporate representative. 7 MR. SIEGEL: I don't think we'll dispute 8 what they testified to. 9 SPECIAL DISCOVERY MASTER FALK: I'll 10 allow you to have your meet and confer on the issue 11 already addressed, and we'll see where you get with 12 that, and then I'll be happy to make a ruling. 13 14 (Whereupon, a brief recess was taken off 15 the record.) 16 17 SPECIAL DISCOVERY MASTER FALK: I think 18 we're up to defendants -- issue one, risk assessment 19 and remediation of AMCA systems. There was an 20 interrogatory. 21 "Identify each instance in which you (or 22 any third party on your behalf) reviewed or examined 23 AMCA's data and information security. For example, 24 you should identify valuations, risks, analysis, and 25 audits of AMCA's data and information security, and</p>
<p style="text-align: right;">Page 75</p> <p>1 knowledge of subpar security, they nonetheless 2 continued to use AMCA as opposed to other debt 3 collectors because AMCA was more successful in 4 recouping bad debt. That's the theory. I don't 5 think there's any doubt that that is a relevant area 6 of inquiry. 7 SPECIAL DISCOVERY MASTER FALK: We're 8 already there. 9 MR. SIEGEL: We have the first part of 10 it. 11 SPECIAL DISCOVERY MASTER FALK: Yes, you 12 did. 13 MR. SIEGEL: That the data security was 14 bad. We've had this meet and confer and some 15 information about volume that they sent to AMCA, and 16 this is just another continuum of that to flush out 17 this concept that they continued to use AMCA despite 18 what were known data security failures. 19 SPECIAL DISCOVERY MASTER FALK: I hear 20 you. Do we all agree as to what I've seen in the 21 papers that all the collection agencies charge the 22 same amount, 15 percent on the first placement and 30 23 percent on the second placement? Is that agreed to 24 or not? 25 MR. HOUSER: We agreed to it.</p>	<p style="text-align: right;">Page 77</p> <p>1 in particular, you should state the scope of the 2 review, the dates of the service, and the -- the 3 dates of the review, the names of those reviewing or 4 examining AMCA's data security and the names who 5 provided information or otherwise participated." 6 Quest responded that it conducted an IT 7 supplier of AMCA B/W approximately October and 8 November of 2014, and then refers to rule 33(d) for 9 citations to documents that can answer remaining 10 portions, and Optum has ruled 33(d) with citations, 11 and I didn't go beyond that. Is that where you are? 12 Is there a dispute about this or no? 13 MR. HOUSER: From Optum's perspective, 14 we have provided literally everything we have. The 15 only issue is that they don't like the 33(d). The 16 33(d), they weren't a broad range of irrelevant 17 documents. They were to the risk assessment, the 18 internal notes of the risk assessment, the 19 remediation, and the actual risk assessment itself. 20 So they have literally everything about our risk 21 assessment of AMCA, and that risk assessment 22 identifies all the individuals involved in that risk 23 assessment, the contract expert. So we have 24 literally all of the documents, and then they deposed 25 an expert for seven hours and other data security</p>

<p style="text-align: right;">Page 78</p> <p>1 issues. They deposed other people on this. From our 2 position, we've given everything, so I don't believe 3 we should have an issue. On our most recent meet and 4 confer, which goes back to December of 2022, that the 5 plaintiff thought we were good to go. I don't think 6 there's an issue from Optum's perspective. 7 SPECIAL DISCOVERY MASTER FALK: 8 Plaintiffs, is there an issue there or not? 9 MR. AYERS: I think the interrogatory 10 response obviously, that doesn't cull itself that 11 there isn't a document production. That said, 12 Optum's production and identification of those 13 documents I guess is helpful. But there's -- the 14 main -- so I would say that while a narrative 15 response is preferred because it would be responsive 16 to the actual rog, the real issue is with Quest. 17 SPECIAL DISCOVERY MASTER FALK: Okay. 18 MR. AYERS: Quest has not produced all 19 of the materials. It's come to light. I'm not sure 20 at the time of the letter, but through subsequent and 21 various depositions that certain documents related to 22 their oversight and assessments are no longer 23 accessible to them or exist. So a narrative response 24 would be absolutely necessary, because they have not 25 produced documents to tell the whole story in</p>	<p style="text-align: right;">Page 80</p> <p>1 plaintiffs are requesting in this interrogatory. 2 SPECIAL DISCOVERY MASTER FALK: Looks 3 pretty good. 4 MR. AYERS: Your Honor, there's 5 information that Quest has advised us subsequent or 6 during discovery that they don't have available to 7 them that are responsive to this request. They 8 certainly haven't produced all of the documents. 9 Certainly, they produced some stuff responsive to 10 this request, but this isn't fully responsive to this 11 interrogatory request. If your Honor wants, we are 12 happy to continue to meet and confer in light of the 13 direction that your Honor has provided to make sure 14 that we have everything in one shape or form. There 15 are a number of documents that they claim because of 16 shifting between document systems that have been lost 17 and don't have access to. Answering a 33(d) wouldn't 18 provide us with that information or information 19 related to those materials that they don't have. If 20 they have that information, then a narrative response 21 would be suitable in that circumstance. 22 MS. SULTANIAN: How could we possibly 23 create a narrative response on documents that we 24 don't have access to? We don't have that information 25 to provide.</p>
<p style="text-align: right;">Page 79</p> <p>1 response to those interrogatories. 2 MS. SULTANIAN: Your Honor, if I could 3 respond to that. 4 SPECIAL DISCOVERY MASTER FALK: Sure. 5 MS. SULTANIAN: We provided a formal 6 assessment of when it was conducted. We pointed to 7 all the documents that were available to us that were 8 produced that themselves identify the scope and the 9 time period of the review. I actually -- we put 10 together a booklet of the documents we pointed to, in 11 case it's helpful to your Honor to look at them. For 12 example, the first document behind the tab labeled 13 "First Rog Response." 14 SPECIAL DISCOVERY MASTER FALK: Right. 15 MS. SULTANIAN: Is the final risk 16 assessment memo. If you look at the second page, 17 there's a column labeled "Details," and next to that 18 it identifies the things that were looked at. There 19 are also e-mails where Tony Heinz, who was the 20 individual that conducted the review, describes the 21 process. The e-mails identify Mr. Heinz as the 22 reviewer for the assessment. They identify the 23 individuals at AMCA, David Ulrich, who were 24 responsible for providing information. These 25 documents identify all of the information that</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. AYERS: The interrogatories aren't 2 about documents. It's about information. Often 3 times -- it's numerous when documents don't exist. 4 You respond substantively in a narrative response. 5 We're not asking for an information on the documents 6 that weren't produced. We're asking for the 7 information we haven't received in the documents. 8 Corporations have a variety of different means not 9 solely within the documents. So that's why a 10 narrative response is provided. Rule 33(d) is only a 11 response where there's documents that actually answer 12 the question. It's not the default. It's the 13 exception. You can respond to 33(d) that has 14 documents that answer it. If you don't have 15 documents, you have to provide a narrative. The idea 16 that they don't have documents to use doesn't get 17 them out of answering the interrogatory 18 substantively. They represented these people at the 19 various depositions, both former and current 20 employees. So they can answer the interrogatories 21 substantively. We can meet and confer about this to 22 find out what they have access to. We do know that 23 there are key documents they have not produced 24 because they claim that they're no longer accessible 25 in the form that they used to be maintained in a</p>

<p style="text-align: right;">Page 82</p> <p>1 certain database they can't access anymore or things 2 have been corrupted or things like that. We know the 3 information hasn't been turned over, and this is why 4 the narrative response to the extent that they can -- 5 SPECIAL DISCOVERY MASTER FALK: It 6 doesn't sound like. You took two depositions on this 7 subject, and you couldn't get an answer to this 8 question or they just don't have it or what? 9 MS. SULTANIAN: Your Honor, so we 10 provided the information that Quest has. As 11 Mr. Ayers is alluding to, there's a separate dispute 12 about the documents in the repository that we no 13 longer have access to. We don't have access to the 14 information in those documents or in any of the 15 individuals that are actually involved in this review 16 because they have left the company long before we 17 prepared these interrogatory responses. So we just 18 don't have any other information that Quest can 19 verify and provide. 20 SPECIAL DISCOVERY MASTER FALK: I 21 suppose you can put that in a sentence. 22 MR. AYERS: Right. 23 SPECIAL DISCOVERY MASTER FALK: I assume 24 the 30(b)(6) deps must have said this. 25 MS. SULTANIAN: That's the other thing,</p>	<p style="text-align: right;">Page 84</p> <p>1 provided what they have. 2 MR. AYERS: You generally answer 3 substantively, and you provide the information. If 4 you're going to refer to something, you either refer 5 to the complete record and explain -- 6 MS. SULTANIAN: And we referred to the 7 complete records that we had access to and could 8 produce. There's no other way to say it. 9 SPECIAL DISCOVERY MASTER FALK: I don't 10 see this as a big issue. I can see adding a sentence 11 saying that we did this security assessment, and we 12 provided two witnesses for deposition, and we 13 provided this thing, whatever it is, and at this time 14 that's the best we can do. I just gave you the 15 answer. 16 MS. SULTANIAN: Thank you, your Honor. 17 SPECIAL DISCOVERY MASTER FALK: You 18 don't have to do it, but that's what you could do. I 19 mean, the form that you provide discovery is more 20 important maybe at a trial stage. If there was a 21 trial, they could just read the interrogatory in or 22 the deposition, which binds -- I'm just talking off 23 the top of my head. We're past that. 24 MR. CECCHI: When you say they don't 25 have to do it, they don't have to like you did, but</p>
<p style="text-align: right;">Page 83</p> <p>1 your Honor. They deposed all of these people now. 2 They have all the information that they're possibly 3 going to get about this. 4 MR. AYERS: And those representatives 5 were unprepared, which is another dispute to put 6 before the court for depositions that they weren't 7 prepared for, and also documents -- you don't always 8 get everything that you ask fulsome answers at 9 depositions. On Day 1, just say, "All right. 10 Corporate rep, take a seat," and you just ask him 11 questions. That's not how it works. You need the 12 documents, the interrogatories responses, and the 13 admissions. We're entitled to these various things 14 and we're entitled to a response, and if they claim 15 that they don't know it, they can so state in a 16 response, but resting on 33(d) when they claim they 17 don't have the documents any longer doesn't cut it. 18 SPECIAL DISCOVERY MASTER FALK: This is 19 a handy thing to have. I order that you provide a 20 further -- an amendment or additional narrative 21 response. It's an interrogatory. You can state what 22 you just state here. What's the difference? I mean, 23 I think we're arguing over nothing. 24 MS. SULTANIAN: I never provided -- it's 25 just not how we prepare interrogatory responses. We</p>	<p style="text-align: right;">Page 85</p> <p>1 they have to give an answer? 2 SPECIAL DISCOVERY MASTER FALK: Yes. 3 They don't usually put on the last half of the 4 sentence, which is we don't have anything else. I'll 5 order in this case at this time given what you said 6 that you provide a further narrative answer to it. 7 You decide what it is. 8 Case rog No. 2. 9 "Identify each security threat that you 10 identified when examining or doing due diligence of 11 AMCA's data and information security. For example, 12 you should identify network and computer-based 13 attacks, malicious software upload, and unauthorized 14 access to PHI." 15 MS. SULTANIAN: The final risk 16 assessment memo that I pointed you to in this binder 17 identify the findings of that assessment. It does 18 not identify anything as a security threat. I'm not 19 sure what plaintiffs means from that. It identifies 20 the findings from the assessment. 21 SPECIAL DISCOVERY MASTER FALK: Okay. 22 Put that as an answer to the question. 23 MS. SULTANIAN: And we did refer to the 24 documents as our response. 25 SPECIAL DISCOVERY MASTER FALK: Okay. I</p>

<p style="text-align: right;">Page 86</p> <p>1 haven't reviewed this, nor do I intend to. I thought</p> <p>2 you didn't have any other documents?</p> <p>3 MS. SULTANIAN: Each of these documents</p> <p>4 is a produced document.</p> <p>5 SPECIAL DISCOVERY MASTER FALK: Okay.</p> <p>6 MS. SULTANIAN: And we referred to those</p> <p>7 documents in our response.</p> <p>8 SPECIAL DISCOVERY MASTER FALK: I think</p> <p>9 we can leave it there. Rog three.</p> <p>10 MS. SULTANIAN: Again, your Honor, the</p> <p>11 final risk assessment memo identifies security</p> <p>12 recommendations. I -- you know, it doesn't identify</p> <p>13 any remediation. That's not how Quest referred to</p> <p>14 these things. It identifies security</p> <p>15 recommendations, and so again, the documents answer</p> <p>16 this interrogatory.</p> <p>17 MR. AYERS: They don't.</p> <p>18 SPECIAL DISCOVERY MASTER FALK: They</p> <p>19 don't?</p> <p>20 MR. AYERS: No. So the document that</p> <p>21 they claim to produce in here, it does identify</p> <p>22 problems that they found, and then despite those</p> <p>23 problems, they then signed a contract with AMCA and</p> <p>24 continued shipping over protected information of</p> <p>25 clients over to it. What's is missing is what is</p>	<p style="text-align: right;">Page 88</p> <p>1 Tony Heinz who did the risk assessment, and they</p> <p>2 deposited Christie Boone. She was in charge of</p> <p>3 reviewing the contract with AMCA. They both</p> <p>4 testified that these security recommendations are</p> <p>5 things you would resolve contractually. And if you</p> <p>6 compare them to the contract that was signed after</p> <p>7 the assessment was completed, those things were</p> <p>8 implemented in the contract. So those are the</p> <p>9 answers.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: I hear</p> <p>11 you. Just to move this along, I'm being presented</p> <p>12 with an interrogatory. You can answer the</p> <p>13 interrogatory the way you did here or any way, and if</p> <p>14 there's a problem, it's a problem. Rule 33(d) says</p> <p>15 that one way of answering interrogatories is by</p> <p>16 referral to business records, which would be equal to</p> <p>17 each side finding the answer. I think it's kind of</p> <p>18 crazy to have me read through these and say that</p> <p>19 would be equal to each side. In other words, you can</p> <p>20 put a paragraph together and answer it the way you</p> <p>21 just answered it. If they don't like it, they can</p> <p>22 argue about it.</p> <p>23 MS. SULTANIAN: Your Honor, Quest can</p> <p>24 only argue its position in its custody and control</p> <p>25 and that it can verify.</p>
<p style="text-align: right;">Page 87</p> <p>1 done in between. Did they rubber stamp it despite</p> <p>2 the problems they found? What did they do in between</p> <p>3 finding problems and continuing to send information?</p> <p>4 That's what's missing. It's not in these documents.</p> <p>5 SPECIAL DISCOVERY MASTER FALK: Wouldn't</p> <p>6 it be more effective to answer that in a deposition?</p> <p>7 MR. AYERS: If they answer that in a</p> <p>8 deposition, but they didn't. We don't have a</p> <p>9 complete understanding of what they did, and it's not</p> <p>10 in the documents. So a narrative response is</p> <p>11 typical. It's what's every party does. It's not</p> <p>12 burdensome. What did you do? If you didn't do</p> <p>13 anything and you rubber stamped the contract, then</p> <p>14 you can so state it. We found problems. We flagged</p> <p>15 that there was, you know, facilities that were a</p> <p>16 problem, but we didn't do anything about it. Then</p> <p>17 they can say that. But this document does not talk</p> <p>18 about that or address that. So it's nonresponsive.</p> <p>19 MS. SULTANIAN: If I may respond, your</p> <p>20 Honor.</p> <p>21 SPECIAL DISCOVERY MASTER FALK: Sure.</p> <p>22 MS. SULTANIAN: First of all, we dispute</p> <p>23 that the risk assessment memo finds problems. That's</p> <p>24 not what it did. To respond to the point, as you</p> <p>25 said, they deposited these witnesses. They deposited</p>	<p style="text-align: right;">Page 89</p> <p>1 SPECIAL DISCOVERY MASTER FALK:</p> <p>2 Absolutely.</p> <p>3 THE VIDEOGRAPHER: And the people that</p> <p>4 did this, they were no longer employees.</p> <p>5 SPECIAL DISCOVERY MASTER FALK: That's</p> <p>6 your answer.</p> <p>7 MR. AYERS: But they did represent them</p> <p>8 at their depositions.</p> <p>9 SPECIAL DISCOVERY MASTER FALK: If you</p> <p>10 want, that's fine. As far as I'm concerned, provide</p> <p>11 a response, and then if you feel insufficient, come</p> <p>12 back and I'll decide it like that.</p> <p>13 MR. AYERS: Thank you, your Honor.</p> <p>14 MS. SULTANIAN: Okay, your Honor.</p> <p>15 SPECIAL DISCOVERY MASTER FALK: Well,</p> <p>16 it's more of the same, the security threats. I think</p> <p>17 this should be answered. I don't know if it is. Who</p> <p>18 is the person or persons that oversaw the</p> <p>19 relationship with AMCA? So why wouldn't you answer</p> <p>20 something like that?</p> <p>21 MS. SULTANIAN: Because the risk</p> <p>22 assessment memos identifies the business owners of</p> <p>23 AMCA. All of them have now been deposed, and</p> <p>24 plaintiffs were able to ask them any questions that</p> <p>25 they had about their responsibilities.</p>

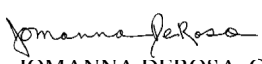
<p style="text-align: right;">Page 90</p> <p>1 SPECIAL DISCOVERY MASTER FALK: Help me</p> <p>2 understand from the plaintiff's side -- its like</p> <p>3 putting three people's names there. Well, they're</p> <p>4 interrogatories. I'm curious, what is the strategy</p> <p>5 of this? Why do you want this in an interrogatory,</p> <p>6 if --</p> <p>7 MR. AYERS: There are certain names in</p> <p>8 documents that I guess we could assume that those are</p> <p>9 the people responsible for it.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: Don't</p> <p>11 assume.</p> <p>12 MR. AYERS: I want to know who's</p> <p>13 responsible, and they can put that name in the</p> <p>14 responsibilities --</p> <p>15 SPECIAL DISCOVERY MASTER FALK: Or names</p> <p>16 if it's more than one person.</p> <p>17 MR. AYERS: Or their names so we know</p> <p>18 each person and what their responsibility is for.</p> <p>19 SPECIAL DISCOVERY MASTER FALK: I think</p> <p>20 it's a legitimate question.</p> <p>21 MR. HOUSER: Just to be clear, we've</p> <p>22 been going through all of this. This is not with</p> <p>23 respect to Optum360. You guys are not taking issue</p> <p>24 with Optum360's responses.</p> <p>25 MR. AYERS: No one pops up at trial and</p>	<p style="text-align: right;">Page 92</p> <p>1 the time periods from which it was transmitted, and</p> <p>2 the method of transfer. We dealt with that too. The</p> <p>3 total number of individual records sent to AMCA. So</p> <p>4 Quest provided categories of patient information and</p> <p>5 rule 33(d), and Optum responded that types of patient</p> <p>6 information was transmitted varied over time and</p> <p>7 depended on whether AMCA was the primary or secondary</p> <p>8 placement and cites to documents as examples, and I</p> <p>9 guess plaintiffs complains that defendants use coded</p> <p>10 abbreviations to describe the categories, and</p> <p>11 defendants should explain what those abbreviations</p> <p>12 mean, and I mean, I agree with that.</p> <p>13 MS. SULTANIAN: So, your Honor, I might</p> <p>14 be able to cut through this dispute. After these</p> <p>15 were served and answered, Quest produced the database</p> <p>16 of patient information. That gives plaintiffs not</p> <p>17 only the categories of information, but the</p> <p>18 information itself. So they've got one. They have</p> <p>19 the description of the categories. They have the</p> <p>20 time periods during which each advertiser customer</p> <p>21 information was transmitted. We produced it in a</p> <p>22 really usable format. Actually, I have here the</p> <p>23 headers of the database that was produced that you</p> <p>24 can see them. It's really easy to understand. They</p> <p>25 have the date on which the patient received Quest</p>
<p style="text-align: right;">Page 91</p> <p>1 says, "Oh, no. This is the person that we were told</p> <p>2 was responsible." It wouldn't be burdensome than any</p> <p>3 lawyers traveling here to fight this dispute.</p> <p>4 SPECIAL DISCOVERY MASTER FALK: I hear</p> <p>5 you. No one is going to pop up at trial if they're</p> <p>6 not included in the initial disclosures, which the</p> <p>7 parties have a duty to update and amend. It's not in</p> <p>8 dispute.</p> <p>9 MR. AYERS: You can amend those -- so we</p> <p>10 ask for an interrogatory. We'll get their response.</p> <p>11 MR. HOUSER: This is not relating to</p> <p>12 Optum360. I think you confirmed that earlier. He</p> <p>13 confirmed it earlier.</p> <p>14 MR. AYERS: You asked me a question.</p> <p>15 I'm just looking to confirm. I believe this talks</p> <p>16 about Quest.</p> <p>17 MR. HOUSER: Yes, it does.</p> <p>18 MR. AYERS: I believe that this dispute</p> <p>19 is with respect to Quest.</p> <p>20 MR. HOUSER: Yes.</p> <p>21 MR. SIEGEL: We answer your questions.</p> <p>22 SPECIAL DISCOVERY MASTER FALK: This is</p> <p>23 the format of Quest patient data of customer</p> <p>24 information shared with AMCA, including a description</p> <p>25 of each category, the format in which it was stored,</p>	<p style="text-align: right;">Page 93</p> <p>1 services, the date on which it was received by AMCA,</p> <p>2 the state in which patient lived, the specific data</p> <p>3 fields that were transferred for each patient. They</p> <p>4 can sort and sum and query this database for Suzy Q</p> <p>5 patient, and X, Y, and Z was sent for her on this</p> <p>6 date. They can do that to get the answers to these</p> <p>7 questions. So the interrogatory responses in some</p> <p>8 respect is a little bit stale because they actually</p> <p>9 now have all the data and can get that information.</p> <p>10 SPECIAL DISCOVERY MASTER FALK: That</p> <p>11 sounds pretty good to me.</p> <p>12 MR. AYERS: Many months after the</p> <p>13 dispute was briefed, they did turn over this file. I</p> <p>14 would suggest that the interrogatory response needs</p> <p>15 to be updated to reflect the production of these</p> <p>16 materials so it's encapsulated within their response.</p> <p>17 SPECIAL DISCOVERY MASTER FALK: I don't</p> <p>18 have a problem with that.</p> <p>19 MR. AYERS: Not a narrative response.</p> <p>20 SPECIAL DISCOVERY MASTER FALK: Right.</p> <p>21 MR. AYERS: This is the information that</p> <p>22 was wanted and was briefed, but it needs to be</p> <p>23 updated.</p> <p>24 MS. SULTANIAN: So supplement to add the</p> <p>25 Bates number and production?</p>

<p style="text-align: right;">Page 94</p> <p>1 SPECIAL DISCOVERY MASTER FALK: That's</p> <p>2 all you need.</p> <p>3 Now, we come to the notification of the</p> <p>4 data breach. I want to hear from you. The plaintiff</p> <p>5 is asking the manner in which you identified and</p> <p>6 determined which individuals can notify in connection</p> <p>7 with the data breach, and Quest says attorney-client</p> <p>8 privilege and work product. Optum says -- they</p> <p>9 assert the privileges. They say it's a 33(d)</p> <p>10 response for the process by which Optum360 identified</p> <p>11 and determined which Quest patients to notify. So</p> <p>12 really, I'm not sure that I understand the privilege</p> <p>13 concept here. First of all, there's no log. I don't</p> <p>14 know if there's a document or not, but you need to</p> <p>15 have logs on privilege things for me, and I'm also</p> <p>16 going to want to see the documents, if they're</p> <p>17 documents. If you're saying it's an oral thing, we</p> <p>18 can talk about that. I don't understand this. In</p> <p>19 other words, they're asking you why you did it, and I</p> <p>20 guess your answer for Quest is we relied on counsel.</p> <p>21 Is this a reliance on counsel thing?</p> <p>22 MS. SULTANIAN: Your Honor, I'm not sure</p> <p>23 what you mean by "reliance on counsel."</p> <p>24 SPECIAL DISCOVERY MASTER FALK: We're</p> <p>25 going to debate that. That obviously has</p>	<p style="text-align: right;">Page 96</p> <p>1 counsel. Keep going. I appreciate it.</p> <p>2 MS. SULTANIAN: So the process of</p> <p>3 identifying who should be notified was</p> <p>4 attorney-client privileged because it involved that</p> <p>5 legal analysis. It's work product because as of the</p> <p>6 point that Quest publicly announced this breach, we</p> <p>7 certainly anticipated litigation.</p> <p>8 SPECIAL DISCOVERY MASTER FALK: Work</p> <p>9 product, there's documents. When you're talking</p> <p>10 about work product, you're usually talking about</p> <p>11 documents. Do you disagree with there?</p> <p>12 MS. SULTANIAN: Agreed, your Honor. We</p> <p>13 got the law of the documents, but we understood this</p> <p>14 to be focused on the interrogatory response, and</p> <p>15 plaintiffs want a narrative response, and the reason</p> <p>16 we cannot give it to them is because it is</p> <p>17 privileged.</p> <p>18 SPECIAL DISCOVERY MASTER FALK: It's an</p> <p>19 interesting question. As you know, underlying facts</p> <p>20 are never privileged. Never privileged. The</p> <p>21 communication between an attorney and client is</p> <p>22 privileged and work product. So in other words,</p> <p>23 there's no way they can find out how you did this?</p> <p>24 MS. SULTANIAN: Well, the fact of who</p> <p>25 was notified, they've got that, but they want the</p>
<p style="text-align: right;">Page 95</p> <p>1 significance. When you assert relying on some</p> <p>2 counsel, there's often a waiver of your privilege,</p> <p>3 not always. There's law on that. I know the law</p> <p>4 well. I did ask a lot of questions because I didn't</p> <p>5 really understand it.</p> <p>6 MS. SULTANIAN: To kind of back up a</p> <p>7 second. Quest and Optum learned of the data breach.</p> <p>8 Immediately, both inside and outside counsel got</p> <p>9 involved in directing the investigation of that</p> <p>10 breach, which included identifying which patients</p> <p>11 needed to be notified of that breach under applicable</p> <p>12 laws. So there's legal analysis intensely tied up in</p> <p>13 that, and both inside counsel -- so for Quest, that</p> <p>14 would be Paul Kattas, Dina Mack, and Keena Hausmann.</p> <p>15 Outside counsel at Sidley got involved immediately,</p> <p>16 and they directed that process of how to investigate</p> <p>17 how to determine which individuals needed to be</p> <p>18 notified under applicable laws. That began in May.</p> <p>19 SPECIAL DISCOVERY MASTER FALK: For</p> <p>20 example, those names, I don't know if they were</p> <p>21 provided to me or who they are.</p> <p>22 MS. SULTANIAN: They're in-house</p> <p>23 counsel.</p> <p>24 SPECIAL DISCOVERY MASTER FALK: But it</p> <p>25 would be helpful to know A, B, and C are in-house</p>	<p style="text-align: right;">Page 97</p> <p>1 process of how we determined who should be notified.</p> <p>2 That's privileged.</p> <p>3 SPECIAL DISCOVERY MASTER FALK: I don't</p> <p>4 know. I'm not sure. It's an interesting question.</p> <p>5 I'll ask the plaintiffs. What's the relevance? Why</p> <p>6 is it important that you know the manner in which</p> <p>7 they chose who to select? You know who selected or</p> <p>8 notified.</p> <p>9 MR. AYERS: They also then notified that</p> <p>10 the people that they provided notice to are not</p> <p>11 necessarily representative of the people that had</p> <p>12 their data impacted during -- you know, during the</p> <p>13 data breach and that maybe it's different. So</p> <p>14 understanding how they got to the people that they</p> <p>15 gave notice to is helpful to understand the class</p> <p>16 that we're talking about of injured consumers of</p> <p>17 patients.</p> <p>18 SPECIAL DISCOVERY MASTER FALK: Yeah.</p> <p>19 MR. AYERS: But it's resting upon this</p> <p>20 idea that the people they did give notice to are not</p> <p>21 necessarily directly representative of the people</p> <p>22 that had their data implicated.</p> <p>23 SPECIAL DISCOVERY MASTER FALK: So how</p> <p>24 many people were notified?</p> <p>25 MR. AYERS: Roughly in total, between</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 AMCA and the defendants? Over 11 million. 2 MR. CECCHI: No. Quest is 11 million 3 itself. 4 MS. SULTANIAN: So to be clear, 5 plaintiffs have the set of data that was transferred 6 to AMCA, so they have the names of those people and 7 the number of them. They have what came back from 8 AMCA after the breach to the defendants identifying 9 the scope of people who were potentially impacted, 10 and so they have the full 360 view of the facts. 11 What they're asking for is for us to disclose our 12 legal analysis and attorney directed process. 13 SPECIAL DISCOVERY MASTER FALK: And you 14 think that that's privileged? 15 MS. SULTANIAN: Yes. 16 SPECIAL DISCOVERY MASTER FALK: And 17 that's based on an oral communication from counsel or 18 there are documents as well? 19 MS. SULTANIAN: There are documents that 20 were logged. 21 SPECIAL DISCOVERY MASTER FALK: Oh, 22 there isn't? 23 MS. SULTANIAN: I don't understand there 24 to be a dispute about the logged communications. 25 SPECIAL DISCOVERY MASTER FALK: It</p>	<p style="text-align: right;">Page 100</p> <p>1 background in terms of notifications in that it was a 2 third-party breach? We were reliant upon information 3 that AMCA provided back. They provided us 4 information on who was potentially impacted. The 5 plaintiffs have all that. They have the data that 6 AMCA sent to us. Right? These people's -- the 7 plaintiffs have those files. So there is a little 8 bit of a black box of information given that AMCA was 9 the one that did the investigation into the literal 10 breach itself and then was reporting back out. 11 MR. CECCHI: Right, and we have an 12 ongoing dispute about a vendor's report, which is now 13 being appealed by AMCA. 14 MR. AYERS: And they also hired a 15 vendor. 16 MR. CECCHI: That's what I was going to 17 say. There's another vendor involved here. 18 MR. HOUSER: Our vendor did not have 19 access to AMCA systems. 20 MR. AYERS: But you did engage the 21 vendor? 22 MR. HOUSER: You know it. We put it in 23 responses. It wasn't launching the kind of analysis 24 that Charles River was doing. 25 MR. CECCHI: So Mandiant -- it's</p>
<p style="text-align: right;">Page 99</p> <p>1 sounds to me -- I'm sorry. It's just an 2 interrogatory. I'm not ready to rule on this right 3 now. It doesn't mean it's automatically not 4 privileged, but there's cases on it. I happen to 5 have written a lengthy opinion on an MDL when you 6 relied on counsel's opinion. I'm not saying look at 7 my opinion, but I know the subject. I'd be happy to 8 hear from you. 9 MR. CECCHI: Judge, we think that's a 10 good way to go about this because, as you pointed 11 out, the underlying facts are not privileged. 12 SPECIAL DISCOVERY MASTER FALK: They're 13 not. 14 MR. CECCHI: And in data breach cases, 15 we run into this issue, the business function that 16 they have to take irrespective of anticipated 17 litigation. They attempt to shield or cloak it with 18 privilege by having an attorney involved. But Quest 19 and Optum had to do this irrespective of litigation. 20 They have to determine how many customers were 21 exfiltrated. I think we can both put a finer point 22 on this. 23 SPECIAL DISCOVERY MASTER FALK: That's 24 very relevant to work product for sure. 25 MR. HOUSER: Can I get some factual</p>	<p style="text-align: right;">Page 101</p> <p>1 Mandiant. Mandiant. We'll try to put a finer point. 2 SPECIAL DISCOVERY MASTER FALK: Put a 3 finer point and bring it back. I'll be happy to 4 decide it. Just on what I have here, it's kind of 5 hard. Quest assignment of contract to Optum. Is 6 this moot? 7 MR. HOUSER: I think it's moot. We've 8 searched for everything that we have -- the 9 plaintiff's theory, they want to know, did they look 10 at what documents are out there about AMCA's data 11 security, and they've asked us for those documents 12 and information about that. We've produced 13 everything that we have. We've done an exhaustive 14 search. There's nothing left to give. We've given 15 it all. 16 MR. AYERS: And did you identify all the 17 responses -- 18 MR. HOUSER: I did. Yep. 19 SPECIAL DISCOVERY MASTER FALK: If 20 there's something further on that, you'll raise it 21 the next time we're together? 22 MR. CECCHI: Yes. 23 SPECIAL DISCOVERY MASTER FALK: There's 24 the question of training of employees. You're 25 talking about basically training of employees?</p>

<p style="text-align: right;">Page 102</p> <p>1 MR. SIEGEL: With respect to PHI and</p> <p>2 PII?</p> <p>3 SPECIAL DISCOVERY MASTER FALK: Yes.</p> <p>4 Quest will not produce. Optum provided a 33(d)</p> <p>5 response, limiting response to training on its HIPAA</p> <p>6 policies when the breach occurred and to the extent</p> <p>7 that training was in connection with third-party</p> <p>8 vendors. Plaintiffs assert that it's relevant to the</p> <p>9 negligence claims. Here you have the issue of</p> <p>10 security. I can imagine there are training</p> <p>11 requirements somewhere. I don't know --</p> <p>12 MR. CECCHI: In HIPAA.</p> <p>13 SPECIAL DISCOVERY MASTER FALK: Perhaps</p> <p>14 in HIPAA. So I don't know. I don't see this being</p> <p>15 any -- I mean, I think it fits within the outer</p> <p>16 margins of the relevance situation. I would provide</p> <p>17 an answer. Unless you tell me why you don't want to</p> <p>18 provide an answer, I guess Quest primarily or Optum.</p> <p>19 MR. HOUSER: Your Honor, on training, we</p> <p>20 have identified documents, right, in terms of</p> <p>21 training. As it relates to data security, if they're</p> <p>22 asking for training of the defendant's employees, for</p> <p>23 instance, on don't click on a phishing e-mail when</p> <p>24 you should click on an e-mail. Training employees on</p> <p>25 those types of things internally, we didn't train</p>	<p style="text-align: right;">Page 104</p> <p>1 policies and procedures of how they train their</p> <p>2 employees at Quest and knowing that they then sent</p> <p>3 the patient data to a vendor that they knew didn't</p> <p>4 have that security and stuff just goes to show how</p> <p>5 asleep at the switch they really were.</p> <p>6 SPECIAL DISCOVERY MASTER FALK: I'll let</p> <p>7 you answer. I think some kind of a narrative</p> <p>8 answer -- I'm not sure how deeply I go deeply down</p> <p>9 that road. I bet the plaintiffs would like the --</p> <p>10 MR. HOUSER: It's very hyperbolic. A</p> <p>11 clean desk policy, I'd like to know how that relates</p> <p>12 whether or not we exercise reasonable security over</p> <p>13 AMCA.</p> <p>14 SPECIAL DISCOVERY MASTER FALK: I agree.</p> <p>15 Looking at the case, the more training you list in</p> <p>16 your answer, the better for you. Do you disagree?</p> <p>17 You don't need to answer that question. This is on</p> <p>18 the outer limits, I think, of relevancy in this case,</p> <p>19 but the question should be answered. I think it's --</p> <p>20 with the liberal standard of relevance, and you can</p> <p>21 hear what counsel just said that that could be</p> <p>22 something that would be important for a finder of</p> <p>23 fact to know, if there was no training, because</p> <p>24 there's this big view -- it's all through the papers,</p> <p>25 and I think it stems from Judge Hammer's decision,</p>
<p style="text-align: right;">Page 103</p> <p>1 AMCA employees, but if we're talking about -- if</p> <p>2 they're asking for training on phishing e-mails or</p> <p>3 anything like that, clean desk policy, don't leave</p> <p>4 documents that are sensitive on your desk. We don't</p> <p>5 think that those types of trainings are relevant to</p> <p>6 AMCA's data security or our oversight of AMCA's data</p> <p>7 security.</p> <p>8 MR. AYERS: Would you like a response?</p> <p>9 SPECIAL DISCOVERY MASTER FALK: Sure.</p> <p>10 It's kind of not a big issue.</p> <p>11 MR. AYERS: I think it does -- it is</p> <p>12 very relevant and germane information to go into this</p> <p>13 negligence and negligence per se request. It's kind</p> <p>14 of like their objections to certain discovery is</p> <p>15 based upon this concept that they want a firewall or</p> <p>16 separation between what AMCA did and what it does.</p> <p>17 It's not. AMCA by law is essentially an extension of</p> <p>18 Quest and Optum. Once they bring it in by contract</p> <p>19 and trusting their patient information with them,</p> <p>20 they are now responsible for AMCA, and its policies,</p> <p>21 to the extent that they differ from the policies from</p> <p>22 AMCA, are relevant to show how it just completely was</p> <p>23 negligent and just asleep at the switch when it came</p> <p>24 to once they shift out their patients data to an</p> <p>25 external vendor, knowing how they train -- the</p>	<p style="text-align: right;">Page 105</p> <p>1 which I think is probably right for what was being</p> <p>2 asked there. The plaintiffs are pleading the</p> <p>3 defendant's negligence in this case, putting aside</p> <p>4 AMCA, and I think when you look at it that way and</p> <p>5 what's pleaded, I think it's relevant. You know,</p> <p>6 maybe marginally relevant, but it's relevant. So I</p> <p>7 ask that the defendants provide an answer to this.</p> <p>8 That's all I have. Is there anything else that you</p> <p>9 want to talk about?</p> <p>10 MR. CECCHI: Judge, what I was going to</p> <p>11 suggest is some of the remaining issues, and there's</p> <p>12 a couple of letters going back and forth. Maybe what</p> <p>13 we should do is meet and confer to see if we can</p> <p>14 narrow those before the next hearing. We might not</p> <p>15 be able to.</p> <p>16 SPECIAL DISCOVERY MASTER FALK: Okay.</p> <p>17 MR. CECCHI: Some of it might overlap</p> <p>18 with the rulings today.</p> <p>19 SPECIAL DISCOVERY MASTER FALK: I think</p> <p>20 it would be a good idea.</p> <p>21 MR. CECCHI: We'll let you know,</p> <p>22 obviously.</p> <p>23 SPECIAL DISCOVERY MASTER FALK: There's</p> <p>24 no shortage of requirements in all courts in this</p> <p>25 country right now to meet and confer and meet and</p>

<p style="text-align: right;">Page 106</p> <p>1 confer.</p> <p>2 MR. SIEGEL: You've given us guidance</p> <p>3 that is really helpful.</p> <p>4 SPECIAL DISCOVERY MASTER FALK: I did</p> <p>5 want to say I think there were privileged disputes</p> <p>6 mentioned in some of those later things. If we're</p> <p>7 talking about privileged disputes, I'd like to see a</p> <p>8 log and probably the documents themselves. I take</p> <p>9 privilege pretty seriously.</p> <p>10 MR. HOUSER: We provided logs.</p> <p>11 SPECIAL DISCOVERY MASTER FALK: You did?</p> <p>12 MS. SULTANIAN: And we didn't bring it</p> <p>13 today.</p> <p>14 SPECIAL DISCOVERY MASTER FALK: You</p> <p>15 didn't need it for today.</p> <p>16 MS. SULTANIAN: We'll provide our logs.</p> <p>17 MR. AYERS: What I would say, and we</p> <p>18 can -- we're planning to provide a substantive or</p> <p>19 letter in response to the declaration that was</p> <p>20 provided because a log wasn't just provided. It was</p> <p>21 a declaration with very conclusory statements. I</p> <p>22 think that when we're talking about some of these</p> <p>23 issues that would involve privilege, a log isn't</p> <p>24 going to really answer the question, and then</p> <p>25 ultimately I think, judge, you're going to need to</p>	<p style="text-align: right;">Page 108</p> <p>1 discussed, there's a team that exists, and they're</p> <p>2 cloaking them now in the attorney-client privilege.</p> <p>3 MR. HOUSER: That's not true as to</p> <p>4 Optum360, and I want to get that on the record.</p> <p>5 Everything that we say this team that's in there we</p> <p>6 dispute. It's on the record that these last minute</p> <p>7 allegations are not conceded.</p> <p>8 THE WITNESS: I don't think any of it is</p> <p>9 conceded. It's in a dispute letter that's before</p> <p>10 your Honor.</p> <p>11 SPECIAL DISCOVERY MASTER FALK: If there</p> <p>12 are privilege issues, I would like to see a log and</p> <p>13 the documents for in-camera review, please.</p> <p>14 MR. HOUSER: Understood.</p> <p>15</p> <p>16 (Whereupon, the hearing was adjourned at</p> <p>17 1:30 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 107</p> <p>1 take these documents for in-camera review.</p> <p>2 SPECIAL DISCOVERY MASTER FALK: I agree</p> <p>3 with that.</p> <p>4 MR. AYERS: It may just cut to the chase</p> <p>5 and suggest that the documents be submitted to you</p> <p>6 for in-camera review. Seeing is believing, so to</p> <p>7 speak. And just what we saw from the declaration</p> <p>8 that was submitted, we obviously take issue with the</p> <p>9 declaration. We don't believe it's accurate, and the</p> <p>10 documents itself will show that the date is in the</p> <p>11 declaration and not conclusory. I ask you --</p> <p>12 SPECIAL DISCOVERY MASTER FALK: I agree</p> <p>13 with that. I think I sent out a e-mail. That's the</p> <p>14 way I decide privilege issues. I don't know how many</p> <p>15 documents you're talking about either. If there's</p> <p>16 10,000, I'm --</p> <p>17 MR. HOUSER: It's one letter. It's not</p> <p>18 that many documents.</p> <p>19 SPECIAL DISCOVERY MASTER FALK: Good.</p> <p>20 MR. HOUSER: We sent Stephanie --</p> <p>21 SPECIAL DISCOVERY MASTER FALK: We have</p> <p>22 some of it. That's for the clawback issue.</p> <p>23 MR. HOUSER: Yes.</p> <p>24 MR. AYERS: There's another issue</p> <p>25 related to the dark web investigation. As we</p>	<p style="text-align: right;">Page 109</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I, JOMANNA DEROSA, a Certified Court</p> <p>5 Reporter and Notary Public of the State of New</p> <p>6 Jersey, do hereby certify that the foregoing is a</p> <p>7 true and accurate transcript of the testimony as</p> <p>8 taken stenographically and digitally at the time,</p> <p>9 place, and on the date hereinbefore set forth, to the</p> <p>10 best of my ability.</p> <p>11</p> <p>12</p> <p>13 I DO FURTHER CERTIFY that I am neither a</p> <p>14 relative nor employee nor attorney nor counsel of any</p> <p>15 of the parties to this action, and that I am neither</p> <p>16 a relative nor employee of such attorney or counsel,</p> <p>17 and that I am not financially interested in the</p> <p>18 action.</p> <p>19</p> <p>20 </p> <p>21 JOMANNA DEROSA, C.C.R.</p> <p>22 License No. 30XI00188500</p> <p>23 Notary Public of the</p> <p>24 State of New Jersey</p> <p>25</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 American Medical Collection Agency Inc., et al.</p> <p>2 Special Discovery Master Hearing (#6152560)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Special Discovery Master Hearing Date</p> <p>25</p>	
<p style="text-align: right;">Page 111</p> <p>1 American Medical Collection Agency Inc., et al.</p> <p>2 Special Discovery Master Hearing (#6152560)</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Special Discovery Master Hearing, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10 _____</p> <p>11 _____</p> <p>12 Special Discovery Master Hearing Date</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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